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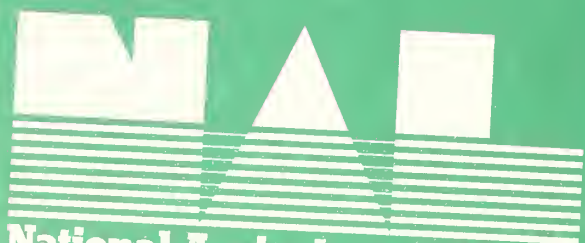
Regulatory Enforcement and Animal Care Policy Manual

May 1992



17 JUL 1992

**United States
Department of
Agriculture**



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REAC POLICY INDEX

Gen.AW Program Procedures/Info.

Dealers/Exhibitors/Licensing

Research Facilities/Registration

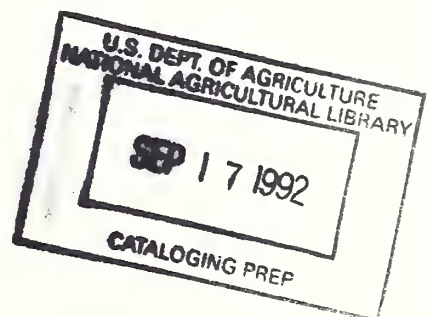
Carriers/Interm.Handlers/Transportation

HP Program Procedures/Info.

Regulatory Enforcement Policy

OGC/Legal Opinion/Information

Admin./Travel/Personnel/EEO/Training/S&H





Gen.AW Program Procedures/
Info.



United States
Department of
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Animal and
Plant Health
Inspection
Service

Subject: Routine Use of Gunshot for Euthanasia

Date: APR 6 1992

To: Sector Supervisors
Animal Care Specialists

Gunshot is not an acceptable method of routine euthanasia for any animal. Gunshot as a routine method of euthanasia not only endangers surrounding animals, buildings, and personnel, but is likely to cause distress to other animals. It should only be used in situations where a captive bolt or other form of acceptable euthanasia is not readily available at the time needed (such as in a field condition) or in cases where gunshot will reduce danger to other animals or humans. Only personnel skilled in the use of firearms and familiar with the "kill point" of an animal should perform the euthanasia (All State and local laws relevant to gunshot must also be met).

The above statements are consistent with the AVMA policy on the use of gunshot for euthanasia. AVMA does not endorse gunshot for routine euthanasia. They say, "Under some circumstances, gunshot may be the only practical method of euthanasia" and "when other methods cannot be used, competently performed gunshot is an acceptable method of euthanasia. When the animal is appropriately restrained, the captive bolt pistol is preferred..."

I hope that this clears up any confusion over this issue. If you have any questions, please contact the Animal Care Staff.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care





United States
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Agriculture

Animal and
Plant Health
Inspection
Service

Subject: Confiscation of Animals

Date: FEB 20 1992

To: REAC Management Team

Mr. Dan Hutchings, Regulatory Enforcement, and member of the confiscation team, has transferred to Kansas. Alan Christian, Director of the Regulatory Enforcement Staff, will be the contact person for confiscation on the Regulatory Staff. As Assistant Deputy Administrator for Animal Care, Dr. Thomas Shehan will assume the responsibility of being on the confiscation team in place of Dr. Morley Cook. Mr. Hogan will continue to be one of the contact persons. Please contact one of these persons when questions arise in reference to this procedure.

Recent concerns were brought to the attention of the REAC Staff that the memorandum on confiscation dated November 1, 1990, is not being followed. A copy is enclosed for your information. Please adhere to the policy of communicating with one of the above individuals when a confiscation is being considered.

Morley H. Cook
Associate Deputy Administrator
Regulatory Enforcement and
Animal Care

Enclosure





United States
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Inspection
Service

Subject

Confiscation of Animals

To:

REAC Management Team

Date: MAR 09 1992

Reference is made to a memorandum dated February 20, 1992, that relates to subject title.

In addition to the information provided in the above memorandum persons associated with the confiscation of animals are reminded that all confiscations must be approved by the Deputy's office and signed by the Administrator prior to the action being taken.

Joan M. Arnoldi
Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and
Animal Care





Subject: Confiscation of Animals

Date: November 1, 1990

To: REAC Management Team

This is to advise that Mr. Robert Hogan, Animal Care Staff; Mr. Dan Hutch Regulatory Enforcement Staff; and I are the contact persons when cases are submitted for possible confiscation of animals. This assignment is being in an effort to expedite cases needing immediate action taken.

When certain instances are encountered that require confiscation, please submit a complete justification so that action can be taken in an expedient manner.

Morley H. Cook
Associate Deputy Administrator
Regulatory Enforcement and Animal Care





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Regulatory Enforcement
and Animal Care

6505 Belcrest Road
Hyattsville, MD 20682

Subject: Animal Care Policy - Development Review
and Implementation Procedures

Date: 01/09/92

To: Animal Care REAC Management Team

This is to clarify the procedure to be used for Animal Care Policy - Development, Review and Implementation.

Development

There are two avenues to identify areas that need policy development: Animal Care Staff and Animal Care Specialists. Actually, these needs are first identified in several ways/locations, often by field personnel. The problem areas are discussed on the ACS bimonthly conference calls and forwarded to the AC Staff with their recommendations. The AC Staff is responsible for development of the policy. The time frame for development is one month upon receipt of the identified areas that need a policy.

Review

Once a policy is drafted it is sent to the Animal Care Specialists with information copies to the REAC Associate Deputy, Animal Care Assistant Deputy and the Sector Supervisors. ACS are responsible for obtaining field comments, as well as, recommendations of the Sector Supervisor. All comments should be forwarded to the AC staff within two weeks of receipt of the draft. No response will be interpreted that the draft is acceptable. The draft will be revised and submitted to the Deputy Administrator for approval/signature.

Implementation

When policy has been signed by the Deputy Administrator, a copy will be sent to the Animal Care Sector Supervisors for distribution.

The complete process for development, review and implementation shall require a maximum of two months.

This should clarify the procedure through which REAC will develop, review and implement Animal Care policies.

Joan Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care





Subject: Approval Process for Policies,
Memoranda, and Notices - REAC

Date: APR 2 1990

To: REAC Headquarters Staffs
REAC Sector Offices

The following further clarifies and replaces my memorandum of January 11, 1990, on the above subject.

1. REAC policies, memoranda, and notices shall be submitted to the REAC Policy Staff for preapproval. "Preapproval" means that the subject matter will be reviewed, discussed, and given the approval to proceed with a written draft proposal. REAC Policy Staff members are: Deputy Administrator, Associate Deputy Administrator, 2 Assistant Deputy Administrators, 2 Special Assistants-Field Operations, 2 Staff Directors.
2. The proposed policy, memorandum, or notice is assigned a REAC number.
3. A written draft is given to REAC Policy Staff Members and Sector Supervisors for review. Drafts will be reviewed within 10 working days of receipt. Comments or negative responses are returned to the person who wrote the draft. Comments are incorporated into a redraft.
4. The drafter will obtain comments from other APHIS persons, if deemed necessary.
5. A draft incorporating all comments will be resubmitted to the REAC Policy Staff.
6. The new draft is reviewed within a week by the Policy Staff, then finalized.
7. The Policy Staff considers the need for industry input. If needed, the drafter forwards and gives 10 working days for comments.
8. The Policy Staff approves the final and determines distribution.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and
Animal Care



cc:

J. M. Arnoldi, REAC, Hyattsville, MD ✓
M. H. Cook, REAC, Hyattsville, MD
A. J. Wilson, REAC, Hyattsville, MD
J. E. Kolpanen, REAC, Hyattsville, MD
E. E. Crooks, REAC, Hyattsville, MD
R. L. Crawford, REAC, Hyattsville, MD



United States
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Animal and
Plant Health
Inspection
Service

Room 560, Federal Building
Hyattsville, MD 20782

Subject: Assignment of Research Facility Program
Activities to Dr. Thomas K. Shehan

Date: OCT 25 1991

To: REAC Management Team

This is to advise that Dr. Thomas K. Shehan has been assigned the responsibility of directing the Animal Welfare program as it pertains to research facilities registered under the Animal Welfare Act (AWA).

Dr. Shehan's responsibilities include directing and coordinating the humane handling, care, treatment, and transportation of those animals in research coming under the AWA. He has operational responsibilities to headquarters and the Sector units in the field as well as determining operating policies and making provision for directions in carrying out the general workload.

Dr. Shehan will be assuming responsibility for the remaining Animal Care programs when he has had an opportunity to review and become familiar with their requirements.

Please give Dr. Shehan your continued cooperation in carrying out this important assignment.

Morley H. Cook
Associate Deputy Administrator
Regulatory Enforcement and
Animal Care





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Subject: Communication with the News Media

Date: JUL 30 1991

To: REAC Management Team

The recent policy of referring all news media requests to headquarters in Hyattsville (memorandums dated June 6 and July 19, 1991) has been rescinded.

REAC will return to the policy set forth in Dr. Glosser's "Guidelines for Dealing with the News Media," dated April 23, 1991. Under this policy requests from local media concerning technical or informational requests about your field of work or area of expertise can be dealt with at the local level without special clearance.

Requests from national news media (especially network television) and requests for interviews are to be reported to headquarters and cleared through LPA as before. If you have any questions in this regard, please contact this office.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care





United States
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Animal and Plant
Health Inspection
Service

P.O. Box 96464
Washington, DC
20090-6464

Subject: Guidelines for Dealing with the News Media

Date: April 23, 1991

To: All APHIS Employees

APHIS has an open-door information policy. The Agency implements this policy by keeping the public and all affected elements of industry fully informed about APHIS programs. **All APHIS employees are authorized and encouraged to discuss their work** with the mass communications media, in schools, and before organizations and community groups. Discussions and talks should be **within the scope of the employee's work and competence.**

You must **keep your supervisor fully informed** of your efforts in these areas so he or she can pass the information up the line.

Responsibilities

Information is an "all-hands job." Each APHIS employee has an information responsibility to help tell the story of how APHIS helps protect American agriculture.

Legislative and Public Affairs (LPA) within APHIS has specific responsibilities for (1) producing useful information tools--such as pamphlets or videos or newsletters--that APHIS employees can use, (2) directing and organizing the communications effort of APHIS in cooperation with program officials, and (3) communicating with representatives of the media about APHIS programs.

LPA has assigned a Public Affairs Specialist to each program area. This person, who has been trained in dealing with reporters, is familiar with your program and is available to provide assistance to headquarters and field offices in dealing with the media. Assistance is available in such areas as media advice, evaluation of media requests, and review or development of fact sheets, press releases, publications, videos, or exhibits. Contact Public Information within LPA at FTS or commercial 301/436-7799.

Requests from the Media for Interviews, Information, and Visits

The Department has a clear policy on dealing with requests for interviews, information, and visits from the **national news media**, particularly network television. **All such requests are coordinated through LPA for consultation with the Secretary of Agriculture's press secretary.** This review (1) identifies sensitive issues or those that could have national interest, and (2) allows LPA an opportunity to help identify the most informed and articulate spokesperson available on a particular topic or issue.



If you are contacted by a representative of the **national media** with a request for an interview, **refer the request to LPA**, which will coordinate an appropriate response. (If the request is merely for factual information in an area for which you are responsible, supply the information, and then inform your supervisor and LPA of your actions.)

Unless they deal with issues of special sensitivity, or with matters that could attract national attention, **requests from local media can be dealt with at the local level** without any special clearance.

If you receive a request from the local media, follow these simple steps:

- * Ask for the name, affiliation and phone number of the interviewer.
- * Determine the topic for the interview.
- * Find out the time frame.
- * Tell the interviewer you will find the most appropriate spokesperson for the Agency and that someone will get back to him/her.
- * Notify your supervisor. (Supervisors should include this information in their weekly reports; see instructions under "feedback" below.)

General Tips on Dealing with the News Media

Here are some tips on dealing with reporters--so that you can help them inform the public about APHIS activities and programs.

(1) Stick to your field of work. This is the most important rule of all. You are qualified to speak about your job and what you do. If you are asked about subjects outside your area of responsibility, simply indicate that fact and tell the reporter that it would not be appropriate for you to comment. At the same time, be responsive. If it is not appropriate to respond, offer to refer the reporter to your supervisor, to LPA, or to a proper source of information if you know of one.

(2) Know who you're talking with. Identify yourself and obtain the identity of your interviewer. Remember, as an employee of USDA, you represent the Department; there is no such thing as a private opinion or an off-the-record comment.

(3) Be courteous and polite. Keep cool--don't make an adversary out of a reporter. If you aren't the proper person to release information (if it's outside your field of work or area of responsibility), tell the reporter that you don't have the facts--and then help find a contact who can be responsive, or refer the reporter to LPA.

(4) Don't debate. Avoid answering charges or discussing rumors. If asked to comment, ask for the facts and offer to report back after the charges have been investigated. Keep in mind, you don't have to have an answer for every question. If you don't know, say so.

(5) Offer additional information to clarify a story. Too often, specific questions are answered as briefly as possible, without offering background facts to complete the story--and help avoid inaccuracies. On the other hand, **don't offer unnecessary information.** Don't volunteer something that will raise more questions than it answers. Don't supply so much detail that you confuse the reporter. Finally, avoid jargon and technical terms--don't say "morbidity," say "sick;" don't say "depopulate," say "destroy."

(6) **Be aware of deadlines.** All reporters have deadlines. Ask what the deadline is so you can supply the needed information in time. However, your answers must be accurate, so if you can't verify your information before a deadline, don't speculate or guess.

(7) **Use pre-cleared information pieces.** Press releases, leaflets, videos, and other APHIS information pieces are designed to help you explain APHIS programs; use them.

(8) **Tell headquarters.** Once you've provided assistance to local media, **inform your boss immediately.** This can help if your supervisor is contacted by the same reporter. Requests for interviews from major news media (such as network TV or major magazines or newspapers--i.e., TIME or the NEW YORK TIMES) and on subjects of special sensitivity should be referred to LPA before assistance--other than general factual information--is supplied to the reporter. All contacts by the press at headquarters should be reported to LPA. (You can call LPA at FTS or commercial 301/436-7799.)

Feedback

Communications is a two-way street. In addition to telling the APHIS story, we need to get feedback from the public and our stakeholders. Field employees are in an excellent position to get this kind of information. If you see local articles or news accounts of issues affecting APHIS, please notify your supervisor and LPA. FAX clippings to LPA at FTS or commercial 301/436-5221.

Supervisors also are responsible for including summary information on responses to inquiries from the media, both local and national, in their weekly reports. This will allow the Agency and LPA to assess the media interest in APHIS issues. It will assist in preparing topics for speeches or presentations for APHIS officials attending local or regional meetings. It also will assist the Agency in its scanning process to identify new trends and developments that may affect APHIS programs and activities.


James W. Glosser
Administrator



Subject:

Agriculturally Used Animals and the
Animal Welfare Act - Clarification

To:

REAC Management Team
Animal Care Specialists

Date: JUN 19 1991

There appears to be some confusion as to how agricultural animals are regulated under the Animal Welfare Act (AWA) and what animals qualify as agricultural animals. This memo is to clarify such use.

Enclosed is a copy of a policy letter dated April 15, 1991, concerning Jacobs Sheep (Four-Horn Sheep) and their regulation under the AWA. The letter is self-explanatory and indicates that agriculturally utilized animals are regulated only when used for nonagricultural research, nonagricultural exhibition, or are held by licensed dealers. Sales of such animals do not require licensing unless 100% of the sales are for regulated purposes.

Also enclosed is a copy of a policy letter, dated September 20, 1990, concerning the regulation of horses and farm animals under the AWA. This memo also indicates that farm animals are to be regulated only when present at a research facility, or the premises of an exhibitor, or a licensed dealer.

Any animals utilized for agricultural purposes (ex. food, fiber, breeding, breed shows, etc.) are subject to limited regulation as indicated above. This policy is the same whether the animals are sheep, pigs or goats, or deer, elk, buffalo, llamas, Jacobs Sheep, or similar type species that are utilized for common agricultural purposes in the United States.

These exemptions would not apply to carnivorous species, bears, nonhuman primates, rhino, elephants, giraffes, or other similar type species as these types of animals are not used for common agricultural purposes in the United States. These animals may be used for breeding and may, on occasion, be used for food. Such activity for these animals is not common agricultural use or production, however, and they are subject to regulation.

To qualify for the above exemption, an animal species must have a logical and reasonable claim that it is used for common agricultural purposes in this country. The claim must be supported by evidence from several sources, such as breed associations or ranchers raising such animals, and must indicate the agricultural purpose of the animals.

We hope this will clarify the question of agriculturally used animals and how they should be regulated under the AWA.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and Animal Care

Enclosures

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Inspection
Service

Federal Bldg.
Hyattsville, MD
20782

April 15, 1991

Mr. Edd Brissell
Hidden View Farm
1435 Collins Road
New Market, Tennessee 37820

Mr. Brissell:

We have reviewed the information you provided on Jacob Sheep and are returning your book, "A History of the Jacob Sheep", with this letter.

After reviewing the information you provided, it is apparent that the Jacob Sheep, although an oddity, have been utilized as agricultural farm animals for some centuries and are presently utilized as breed show animals and for wool and mutton production. In keeping with our policy of regulating domestic agricultural animals only when used for non-agricultural research or non-agricultural exhibition, we have determined that the sale of Jacob Sheep does not require licensing under the Animal Welfare Act unless all sales are for regulated purposes such as to research, exhibitors, or pet stores.

This policy is in keeping with the Act which excludes farm animals, livestock, and poultry used for food and fiber or other agricultural purposes. This policy also applies to breeders of llama, deer, elk, buffalo, and other such animals when raised and sold for food, fiber, or other agricultural purposes such as breeding, production, and breed shows.

The use of Jacob Sheep for research or exhibition purposes does require licensing. Jacob Sheep and other such agricultural production animals are also regulated when held or sold by a licensed dealer. The sale of all such animals for only regulated purposes would also require licensing under the Act. However, the sale of some of these animals for regulated purposes while others are sold for food, fiber, or agricultural purposes does not require a person to be licensed.

I hope this adequately explains our position in this matter and the status of the Jacob Sheep. If you have any questions, please contact me.

Sincerely,

/s/

R. L. Crawford
Director
Animal Care Staff
Regulatory Enforcement
and Animal Care

Enclosure





Subject: Regulation of Horses and
and Other Farm Animals

Date: SEP 20 1990

To: REAC Management Team

Horses and other farm animals will be regulated under Part 3, Subpart F - Animals Other Than Dogs, Cats, Rabbits, Hamsters, Guinea Pigs, Nonhuman Primates and Marine Mammals, until such time as specific standards are developed for them. The new standards will cover horses, pigs, goats, and cattle, including miniature or pygmy breeds.

The REAC Policy Team has discussed this issue and has decided on the simplest, most practical, and reasonable approach to this problem. The decision basically says that a horse is a horse, a pig is a pig, and a goat is a goat. Thus, a miniature horse is a horse and will be regulated only when used for biomedical or nonagricultural-type research. The miniature pig and the pygmy goat are pigs and goats respectively and will be regulated, along with other farm animals, when used for nonagricultural research or nonagricultural exhibition purposes. Such animals will be subject to regulation only when present on a research facility, exhibitor, or licensed dealer's premise. Transportation of such animals by licensees or registrants shall be according to accepted livestock handling and transport practices until standards are developed for these animals.

Until specific policy is set, the following procedures will be followed:

1. During routine inspections, inventory of farm-type animals will be noted.
2. Discuss with the officials of the facility that we will be regulating farm-type animals and that the standards in Part F will be used until specific standards are developed.
3. The use of the animals, whether for research or for exhibition, should be noted.

There are many questions to be answered before the program is ready to be put into force. Any specific complaints should be investigated and documented. The findings of the investigation should be forwarded to the Animal Care Staff for review.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care





United States
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Agriculture

Animal and
Plant Health
Inspection
Service

Subject: Policy Covering Horses Under The Animal Welfare Regulations

Date: MAR 21 1991

To: REAC Management Team

This will clarify REAC policy on the coverage of horses under AWA regulations.

The AWA specifically exempts horses except when used in biomedical research. We believe Congress intended to exclude all domestic equine except when used for research. Domestic equine includes horses, ponies, miniature horses, mules, and donkeys or asses. Domestic equine does not include the Przewalski horse or zebras.

When applying the Act, regulations and standards, please remember that all domestic equine are exempt from regulation except when used in biomedical research.

When horses are used in biomedical research, the standards in Subpart F are to be applied until specific standards are developed.

Should you need further information, please contact the Animal Care Staff.

for Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

cc:
Staff Officers, AC
Staff officers, RE





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Federal Bldg.
Hyattsville, MD
20782

May 11, 1992

REGULATORY ENFORCEMENT AND ANIMAL CARE
MEMORANDUM NO. 405

Subject: List of Tag Manufacturers - Laboratory Animals

To: REAC Management Team

I. PURPOSE

This memorandum updates addresses and telephone numbers of commercial tag manufacturers who are suppliers of official dog and cat tags for use under the Animal Welfare Act (AWA). These manufacturers have requested Regulatory Enforcement and Animal Care (REAC) to add their names to the list.

II. CANCELLATION

REAC Memorandum No. 405, dated June 17, 1991, is hereby canceled and should be destroyed.

III. GENERAL

These manufacturers are listed in compliance with Section 2.52, Part 2, Subchapter A, Title 9 of the Code of Federal Regulations.

In order to keep the list current, please advise headquarters promptly by memorandum if contacted by tag manufacturers who wish to be added to the list. Additions and deletions to the list will be issued as necessary.

IV. LIST OF COMMERCIAL TAG MANUFACTURERS

Metal Identification Tags

Ketchum Manufacturing Company
Lake Luzerne, NY 12846
Telephone: (518) 696-3331

St. Paul Stamp Works, Inc.
87 Empire Drive Avenue
St. Paul, MN 55103
Telephone: (612) 222-2100

National Band & Tag Company
P.O. Box 430
New Port, KY 41072
Telephone: (606) 261-2035

The Keyes-Davis Company
P.O. Box 1557
Battle Creek, MI 49016
Telephone: (616) 962-7505




Plastic Identification Bands Only

These Companies Do Not Produce Metal I.D. Tags

Products International Company
2320 West Holly Street
Phoenix, AZ 85009
Telephone: (602) 257-0141

Hollister Company
2000 Hollister Drive
Libertyville, IL 60048
Telephone: (708) 680-1000



Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care



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Subject: Information Maintained in Official Files
of Licensees and Registrants

Date: MAY 20 1991

To: Sector Supervisors, AC

It has been brought to our attention that the Sector offices may be in possession of documents or other information submitted by licensees or registrants that is not required by APHIS. The recordkeeping requirements as outlined in the regulations are rather specific. Some licensees and registrants may voluntarily furnish information to the Sector office as they attempt to demonstrate and document compliance. Others may submit similar information due to a lack of understanding of the recordkeeping requirements. Any information that is voluntarily submitted by a licensee or registrant including animal study proposals, IACUC membership lists, plans for the exercise of dogs or the psychological well-being of nonhuman primates, or other information which is required to be maintained by the licensee or registrant yet not required to be submitted to APHIS, should be returned to the respective licensee or registrant. This information should not be kept in the Sector office or by the inspector unless required for compliance purposes.

Through the Freedom of Information Act, official documents that are maintained in Sector files are releasable. Whereas we have an obligation of public accountability to release certain documents, we also have an obligation, under the same Act, to protect the trade secrets or other confidential information that pertains to licensees or registrants. Therefore, it is incumbent upon each Sector office to ensure that only required official documents are maintained in the files of licensees and registrants.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care



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Service

Subject: Animal Records - Clarification

Date: MAR 18 1991

To: REAC Management Team

It has come to our attention that some licensees and registrants are failing or resisting in providing the required driver's license and vehicle license information required for dog and cat records. Some licensees and registrants are also questioning our authority to request a social security number in lieu of the driver and vehicle license information as set forth in the attached memorandum dated January 4, 1991.

Regulations require a driver's license and vehicle license information, along with other information, for each dog or cat acquired by a licensee or registrant from an unlicensed or unregistered source. The intent and purpose of this requirement is to provide positive I.D. for the source of the dogs and cats so as to better control and trace stolen animals. We are willing to accept the social security number along with a complete address, telephone number, and directions to the premises (source) of the animals, in lieu of the driver's license and vehicle information, as positive I.D. for the source of the animals.

If the person(s) providing dogs and cats to licensees and registrants cannot provide this positive I.D. for the records, then the licensee or registrant cannot obtain dogs or cats from those sources. If a licensee or registrant does obtain dogs or cats without the required information for positive I.D., they are in violation of recordkeeping requirements and will be so charged for possible legal action.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

cc:
Staff Officers, AC
Staff Officers, RE





United States
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Plant Health
Inspection
Service

Subject: Animal Records - Dealers, Exhibitors
and Research Facilities

Date: JAN 14 1991

To:

Sector Supervisors, REAC
Animal Care Specialists

Sections 2.35(6)(3), 2.75(a)(1)(iii) and (b)(1)(iii), and 2.76(a)(4) require that records for animals acquired or disposed of by dealers, exhibitors, or research facilities must show the vehicle license number and State, and the driver's license number and State of the person from whom the animal was acquired or to whom the animal was disposed of if the person is not licensed or registered under the Act.

It has come to our attention that some persons may not have a vehicle and/or driver's license (example: the elderly or those who have lost their licenses via court action) and that some dealers are being charged with non-compliance on inspection when this information is not shown on the record form because the source of the animal did not have a driver's license and/or vehicle. Common sense should be exercised in such instances.

The intent of this requirement is to clearly identify the source of animals obtained by licensees and registrants. The driver's license number and State and the vehicle's license number and State should be obtained and used when the person(s) selling the animal(s) to, or buying it (them) from, the licensee or registrant has (have) a vehicle and/or driver's license.

If such person(s) do not have a vehicle and/or driver's license, then a social security number should be obtained along with a complete address, directions to the residence, and telephone number. The social security number would provide satisfactory identification in instances where vehicles and/or drivers' licenses are not owned by the individual. In such instances the REAC inspector should take steps to assure that the individual in fact does not have a vehicle or driver's license and resides at the indicated address.

Any questions in this regard should be addressed to the Animal Care Staff.

Sincerely,

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care



APHIS—Protecting American Agriculture



Subject: Animal Welfare Regulations

Date: MAR 5 1991

To: All Animal Care Employees, REAC

I want to share the enclosed letter with you which is only one of many that this Agency is receiving now that the Animal Welfare Regulations have been finalized. Many of you made significant contributions to this effort and I want to personally thank you on behalf of this Agency.

REAC accomplished what was assumed by many to be an impossible task. However, you should recognize that there are individuals in the animal welfare community who are concerned about the enforceability of the performance standards.

We will need to work hard this next year to prove that these new regulations will have positive benefits for the animals that we strive to protect. I am confident that we can accomplish this goal.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and
Animal Care

Enclosure





AMERICAN VETERINARY MEDICAL ASSOCIATION

A VETERINARY PROFESSIONAL SOCIETY • FOUNDED 1888

1023 FIFTEENTH ST., NW • WASHINGTON, DC 20005 • PHONE 202 659 2040 • FAX 202 842 4369

20 February 1991

The Honorable Clayton Yeutter
Secretary
US Department of Agriculture
14th and Independence Ave., SW
Room 200-A
Washington, DC 20250

Dear Mr. Yeutter:

On behalf of the American Veterinary Medical Association (AVMA), I would like to compliment Dr. James Glosser, Dr. Joan Arnoldi and the members of the Animal and Plant Health Inspection Service's Regulatory Enforcement and Animal Care Branch for their exemplary performance in completing the regulations required by the 1985 Farm Bill amendments to the Animal Welfare Act. AVMA echoes the kudos that APHIS has received from the National Institutes of Health and the biomedical research community for a transition from engineering standards to performance standards.

AVMA appreciates the agency's careful review of previous comments and their obvious incorporation into the animal welfare standards. The overall reliance upon the judgement and knowledge of the attending veterinarian is entirely appropriate and welcomed. These are the individuals with the knowledge, skills and training essential to the successful implementation of performance-based standards. AVMA applauds APHIS for its general approach to establishing standards for exercise of dogs and psychological well-being of primates. It is appropriate that these standard operating procedures be tailored to the needs of individual animals and institutions.

AVMA appreciates the agency's willingness to allow science to guide the implementation of these regulations. AVMA believes that this approach will foster innovative approaches to animal care and treatment that will result in the improved welfare of the animals. We offer our congratulations on a most thoughtful and appropriate set of standards.

Sincerely,

A handwritten signature in dark ink, appearing to read "Shelton E. Pinkerton", is written over a horizontal line. The signature is fluid and cursive, with a long, sweeping underline that extends to the left.

Shelton E. Pinkerton
President

SEP/MDB

AWA Part 3, A&D

FEB 13 1991

James W. Glosser
Administrator

Enclosed is some general information relative to the new regulations which will be helpful in answering general questions about the regulations and enforcement of performance standards.

Questions of a more technical nature may be referred to the Deputy's office or the Animal Care Staff.

~~Joan M. Arnoldi~~

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and
Animal Care

Enclosure

cc:

R. Melland, OA
J. Duncan, LPA
Sector Supervisors, ACS
G. Brickler

ENFORCEMENT OF PERFORMANCE STANDARDS

Definitions:

Design Standard: This is a standard whereby a specific method is used to make a definitive determination of compliance. Examples would be the size of primary enclosures, temperature ranges, or a specific kind of food and water container.

Performance Standard: This is a standard viewed in terms of results achieved. The use of these standards allows the attending veterinarian to be flexible in his/her decisions on what is most suitable for the animals involved. These standards are applied only when they do not create excessive variation in regulatory benefits and the containment, safety, and well-being of the animals are not compromised.

Regulations and Standards:

The present regulations and the standards to be published February 15, 1991, are a mix of specific design standards and general performance standards. Minimum standards are specifically stated, such as minimum cage size, frequency of cleaning and sanitation, and temperature limits. Performance standards are used in the areas of the exercise of dogs and the psychological well-being of nonhuman primates.

Dogs:

Facilities must develop a written, appropriate plan to provide dogs with the opportunity for exercise. The plan must address general requirements. The specifics of how these general requirements are addressed, implemented, and carried out are left to each facility and must be set forth in the plan. These plans must be available to APHIS inspectors who then check during inspection to see that they are being carried out.

Primates:

Facilities must develop and follow an appropriate plan for environmental enhancement adequate to promote the psychological well-being of nonhuman primates. The plan must address general requirements and be in accordance with accepted professional standards. Specifics as to how the general requirements are addressed will be set forth in each facility's plan. These plans must be available to APHIS inspectors who will then check during inspection to see that they are being carried out.

ENFORCEMENT OF PERFORMANCE STANDARDS

Accomplishment/Enforcement:

Performance standards establish a general requirement which must be met by each facility. The exact method of compliance is left up to the facility to determine.

Performance standards accomplish the same end result as specific design standards but allow flexibility for individual circumstances rather than requiring all to comply to exactly the same requirement.

Facilities will develop plans/sop's to carry out the performance standards.

REAC inspectors will review the plans/sop's for adequacy and will compare actual inspection findings to the plan/sop to determine if the requirements are being properly implemented and carried out and the well-being of the animal is being addressed.

Questionable situations will be discussed with the attending veterinarian, IACUC, and/or other knowledgeable experts in order to determine the adequacy of the facility program and to recommend changes.

Unsatisfactory responses or unresolved situations on behalf of industry will result in legal action by the Department.

Training:

Training for all REAC VMO's on enforcement of performance standards and inspection of research facilities is scheduled for March 25-29, 1991, in Tulsa, Oklahoma.

Mr. Tom Walsh, OGC, is very committed to the enforcement of performance standards and will assist REAC in the training of field inspectors.

A second training course on enforcement of performance standards/inspections of research facilities will be held in early FY 1992. This will be to assess enforcement efforts, discuss problems that have arisen, and to make any necessary changes or adjustments that might be indicated.

REAC is participating with NIH in workshops throughout the country to answer questions about performance standards from the research community.

REAC will participate in industry meetings and conferences, when possible, to provide instruction/guidance on compliance with and enforcement of performance standards.

2/13/91



Subject: Use of Shocking Devices During Training or Other Handling Activities
Involving Non-Human Primates

Date: 24 JAN 1991

To: REAC Sector Offices
Animal Care Staff

An issue has arisen concerning the appropriateness of using shocking devices, e.g., "cattle prod," as tools for the training or handling of juvenile, non-human primates.

The use of electric shocking devices (e.g., cattle prods, hot shots) for the training, working, or handling of any regulated animals under the AWA is not acceptable. Section 2.131 prohibits physical abuse and methods of handling animals that cause behavioral stress, physical harm, or unnecessary discomfort. The use of such devices should be considered a violation of Section 2.131 unless it is part of an approved research protocol.

Please advise your field personnel of the preceding recommendation.

R. L. Crawford
Director
Animal Care Staff
Regulatory Enforcement
and Animal Care



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject: FOIA Requests for Program of Veterinary Care
and Exhibitors' Itineraries

Date: NOV 16 1990

To: REAC Management Team

We are informed that FOIA requests involving itineraries for traveling exhibitors can be denied based upon possible use of this information by a competitor resulting in a loss of business. Any requests for exhibitor itineraries should be denied on this basis.

Requests for the Program of Veterinary Care (PVC) would be granted since the veterinarian's name and address are recorded on the 18-8 and would be available through FOIA requests for these forms. If PVC's are not maintained in REAC files, they would not be available through FOIA requests.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and Animal Care



Use of Inspection Report Form --
APHIS Form 7008 (Revised VS Form 18-8)

November 8, 1990

REAC Management Team

There has been concern expressed by dealers, exhibitors, and the research community about having the opportunity to communicate their views of inspections conducted at their facilities by writing on the inspection report, APHIS Form 7008.

These inspection reports are official APHIS forms specifically designed to document the results of a facility inspection. This is a Federally approved form and is to be used only by the authorized inspector. It remains the property of APHIS and is filed as a record of the facility's inspection. It may become necessary to use this document for a hearing or court proceedings. Therefore, the use of the form is restricted to the inspector's inspection data. Any written remarks of rebuttal on the form concerning the results of the inspection by the director/manager of a facility are prohibited.

The official of the facility may, however, prepare a letter to accompany the form. The correspondence may become part of the facility record filed with the respective Sector Office. If this is not convenient at the time of the inspection, the facility may send a letter to the Sector Office requesting their written concerns be filed with the inspection report.

If you have further questions concerning this issue, please contact Dr. R. L. Crawford, Director, Animal Care Staff, REAC, FTS 436-7833.

/s/Morley H. Cook

Morley H. Cook
Associate Deputy Administrator
Regulatory Enforcement and Animal Care
cc:
Animal Care Staff
Regulatory Enforcement Staff
APHIS:REAC:MHCook:sg:436-4980:11-7-90(APHIS/FORM/7008)

Distribution of United States and
International Certificate of Health
Examination for Small Animals (VS Form 18-1)

November 1, 1990

B. G. Johnson
Associate Deputy Administrator
Veterinary Services

This is to confirm our recent telephone conversation regarding the distribution of VS Form 18-1 from Veterinary Services Area Offices and REAC Sector Offices.

We appreciate your continued support for distribution of the form to licensed veterinarians. This has been a convenience to the requesting veterinarians and a significant help to REAC. We have had a concern, however, that these forms are being released to dealers, exhibitors, and other non-authorized persons. Distribution is to be made only to licensed veterinarians. Your cooperation in limiting the release of this form to authorized persons is appreciated.

/s/Morley H. Cook

Morley H. Cook
Associate Deputy Administrator
Regulatory Enforcement and Animal Care
cc:
Sector Supervisors, AC
R. L. Crawford, AC Staff, REAC

APHIS:REAC:MHCook:sg:436-4981:11-1-90(johnson /18-1)

OCT 22 1990

REAC Sector Supervisors

Many research facilities have restricted entry requirements for personnel entering special research areas. Most facilities require negative TB tests every 6 months to a year in order to enter nonhuman primate facilities. Some facilities require that personnel be vaccinated for certain diseases before entering a study area such as rabies vaccination, in order to enter a rabies study area.

REAC inspectors should comply with any requirements the facility applies to its own personnel entering such areas. TB tests should be provided to all personnel who may have to enter nonhuman primate areas. These tests can usually be done by a local public health office at little or no cost.

Vaccinations for diseases, such as rabies, should be on a voluntary basis. We will not require that employees be vaccinated if they do not wish to do so. Supervisors should check with local public health offices to see if they can perform the vaccination procedures.

Costs for TB testing and vaccination will be paid from REAC funds and should be noted as a special budget cost item so that costs can be traced. Many testing and vaccination procedures will apply to AC inspectors. However, there may be instances in which RE investigators may have to enter such areas. RE supervisors should identify these investigators who may need to enter such areas and provide them with the required testing and vaccination.

Joan M. Arnoldi

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

APHIS:REAC:RLCrawford:jb:436-7833:10-12-90(Memo.Vac.Test.Field.Insp.)



Subject: Completion of Inspection Forms 18-8

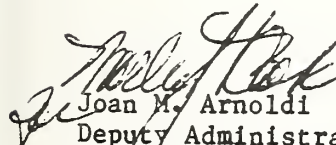
Date: **AUG 7 1990**

To: All REAC Personnel

It has come to our attention that some inspections and investigations are being made to ascertain compliance with the Act, regulations and standards, and that inspection forms 18-8 (APHIS Form 7008) "Inspection of Animal Facilities, Sites, or Premises," are not being completed.

This is potentially embarrassing and could be legally damaging to the Department should the situation result in court action, animal confiscation, or other types of highly visible activity.

Whenever an inspection or investigation is made of a licensee's or registrant's animals, premises, trucks, or records, an inspection form should be completed. The inspection form should indicate whether it is a full or limited inspection (site, records, truck, etc.), and a copy should be left with the facility or owner. If additional narrative information is required or is available, it can be attached on a separate sheet of paper at that time or at a later date. When in doubt, complete an inspection report.


Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

Subject: Outdated Drugs and Medical Supplies

Date: MAY 31 1990

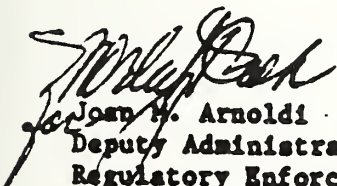
To: REAC Sector Supervisors
Animal Care Specialists, AC
REAC Staffs

This memorandum cancels the previous memorandum on this subject dated July 10, 1985. All July 10, 1985, memorandums should be destroyed.

In order to bring APHIS policy on the use of outdated drugs into agreement with other Federal agencies and professional veterinary organizations, the option of using outdated drugs at the facility's discretion and risk has been deleted. This change will become effective on October 1, 1990.

The regulations and standards (9 CFR §§ 2.33 and 2.40) require, among other things, that a program of adequate veterinary care be established and maintained under the supervision and assistance of a doctor of veterinary medicine. Adequate veterinary care is deemed to mean that appropriate, proper, and professionally acceptable methods, techniques, and practices are in effect and utilized in regard to the involved animals. This most certainly covers any treatments or drugs that may be used on regulated animals. The following policy and procedure will, therefore, be followed when outdated drugs are found during inspection.

All outdated drugs found in any licensed or registered facility are to be identified and brought to the attention of the responsible officials and/or the attending veterinarian. Such drugs should either be properly disposed of or placed in a separate, outdated drug cabinet. The use of outdated drugs is not considered to be an acceptable veterinary practice and does not provide adequate veterinary care under the Animal Welfare Act.



Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

Dealers/Exhibitors/
Licensing



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Federal Bldg.
Hyattsville, MD
20782

May 11, 1992

REGULATORY ENFORCEMENT AND ANIMAL CARE
MEMORANDUM NO. 400

Subject: Preparation of Animal Dealers' and
Animal Exhibitors' Licenses
(APHIS Form 7007)

To: REAC Management Team

I PURPOSE

The purpose of this memorandum is to provide information on the preparation of animal dealers' and exhibitors' licenses.

II CANCELLATION

This cancels VS Memorandum 595.3 dated June 22, 1983.

III GENERAL

When a dealer's or exhibitor's license (APHIS Form 7007) is issued to a corporation, only the corporation's name should appear on the top of the license form. All corporate officers should be listed in proper order on the application.

In the case of a partnership, names of each partner should appear on the license form.

IV PROCEDURE

Following are samples of an individual, a corporation, and a partnership as they should appear on a dealer's license:

Individual

Robert Lewis

or

Robert Lewis, doing business as Lewis Animal Farm

or

Robert Lewis, d.b.a. Lewis Animal Farm



Corporation

John Richardson, Inc.

or

John Richardson, Inc., doing business as Richardson Beagle Farm or

John Richardson, Inc., d.b.a. Richardson Beagle Farm

Partnership

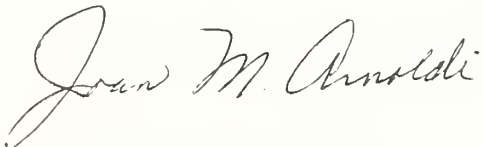
Ralph Smith and Jim Johnson

or

Ralph Smith and Jim Johnson, doing business as Holiday Kennels or

Ralph Smith and Jim Johnson, d.b.a. Holiday Kennels

APHIS Form 7007 may be used for both licensed dealers and licensed exhibitors. Old forms (VS Form 18-7) should be discarded when the revised form (APHIS 7007) is received.



Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

Questions on the Sale of Puppies
by a Licensed Dealer

6 MAY 1992

Sector Supervisors
Animal Care Specialists

Several questions have been asked concerning the sale of puppies by a licensed dealer. They are:

1. If a licensed dealer sells puppies directly from his/her premises to unlicensed individuals for pets, do the puppies have to be 8 weeks old?

Answer: No. Because the licensed dealer is not transporting the puppies in commerce, the puppies do not have to be 8 weeks old. However, the inspector should notice if the same buyer's name shows up more than once on the records. A dealer could be illegally transporting animals by stating that they were sold as pets to an individual.

2. If a licensed dealer sells puppies at a flea market do they have to be 8 weeks old?

Answer: Yes. Because the dealer has to transport the puppies to the flea market the puppies must be 8 weeks old.

3. Does an exempt person (such as someone breeding one dog) have to comply with the 8 week rule?

Answer: Only if commercial transport is involved.

Jerry D. DePoyster, DVM
Veterinary Medical Officer
Animal Care Staff
Regulatory Enforcement
and Animal Care

cc:
Morley H. Cook
Thomas K. Shehan

APHIS:REAC:JDDePoyster:jb:436-7833:5-4-92(Memo.SS.ACS.Sale.Puppies.by.dealer)

License Fees for the Production
and Sale of Blood Products

APR 17 1992

Sector Supervisors
Animal Care Specialists

This is to answer how to charge license fees for the production and sale of blood products.

The class "B" license fee will be based on the total amount of blood product sales in a year. The cost of the animals will not be deducted from this figure, unless new animals are obtained for every batch of blood products (exsanguination). See the table in 9 CFR, Section 2.6(c) for license fee determination.

If there are any questions, please contact the Animal Care Staff.

R. L. Crawford
Director
Animal Care Staff
Regulatory Enforcement
and Animal Care

cc:

Morley H. Cook, Associate Deputy Administrator, REAC
Thomas K. Shehan, Assistant Deputy Administrator, REAC, AC

APHIS:REAC:JDDePoyster:dp:436-7833:4-16-92(Memo.Sector.Supervisors/AC Speci)

Use of Leased or Rented Animals by Licensees

MAR 6 1992

REAC Sector Supervisors
Animal Care Specialists

A question has been raised as to the policy on persons who rent or lease animals to licensed exhibitors for commercials, movie, TV work, etc.

9 CFR - Section 2.6: addresses leased animals used by licensees. Leased or rented animals are considered to be the same for purposes of regulation. Section 2.6(b)(5), states: "Animals which are leased shall be included in the number of animals being held by both the lessor and the lessee when calculating the annual fee."

A legal opinion, dated November 1, 1984, dealt with the leasing of pregnant bitches for compensation and whether such activity required licensing under the Act. A copy of the opinion is enclosed. The opinion basically held that such an activity constituted the sale of unborn dogs and was, therefore, a regulated activity. Similar reasoning may be applied to persons who lease or rent animals to licensed exhibitors for use in filming commercials, movies, or TV programs. The person who leases or rents an animal to a licensed exhibitor, and receives compensation for the lease or rental, is acting as an exhibitor and must be licensed.

In view of the above, if a person leases or rents an animal to a licensed exhibitor for exhibition purposes, and receives any type of compensation (direct or indirect) for such lease or rental, that person should be licensed as an exhibitor. Having indicated that such a person should be licensed we must also state that reasonable common sense must also be used in these instances. If such lease or rental is a one-time occurrence, it would not make sense to require the owner to be licensed. The owner should be advised, however, of the need to be licensed, if such activity will continue. If the leasing or rental is to take place more than one time, the owner who rents the animal should be licensed.

If you have any questions, please contact your Sector Office or the Animal Care Staff.

~~Joan M. Arnoldi~~

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

Enclosure

cc:
Morley H. Cook, REAC
Thomas K. Shehan, REAC/AC
Alan R. Christian, REAC RE
Animal Care Staff, REAC

APHIS:REAC:RLCrawford:ojs:436-7833:01/31/92:(memo.leased.rented.animals)



United States
Department of
Agriculture


Office of
General
Counsel

Washington
DC
20250

NOV 01 1984

MEMORANDUM

TO: R. L. Rissler, Assistant Director
Animal Health Programs, APHIS

FROM: John C. Chernauskas 
Assistant General Counsel
Marketing Division

SUBJECT: Opinion Request of July 23, 1984

In a memorandum dated July 23, 1984, we were requested to report our legal opinion on the operations of Mr. [REDACTED] of South Dakota. Specifically, we were asked whether Mr. [REDACTED] "leasing" of pregnant bitches required licensing under the Animal Welfare Act. Section 2 of the Act defines a dealer as "any person who, in commerce, for compensation or profit... sells ... (1) any dog or animal whether alive or dead for ... use as a pet." 7 U.S.C. § 2132 (f) (1982). It is clear that Mr. [REDACTED] "leasing" arrangement is, in substance, the sale of unborn dogs for eventual use as as pets. Since the Act includes both live and dead dogs in its definition of dealer, it is our opinion that Mr. [REDACTED] is operating as a dealer and must be licensed under section 4 of the Act. 7 U.S.C. § 2134 (1982).

* * *



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject:

Exhibition of Dangerous Animals

Date:

JAN 22 1992

To:

REAC Management Team

It has been brought to our attention that clarification is needed regarding REAC policy on the exhibition of dangerous animals.

Section 2.131(b)(1) states, "During public exhibition, any animal must be handled so there is minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the animal and the general viewing public so as to assure the safety of animals and the public." Section 2.131(c)(2) requires that a "responsible, knowledgeable, and readily identifiable employee or attendant must be present at all times during periods of public contact." Section 2.131(c)(3) directs that "...dangerous animals...must be under the direct control and supervision of a knowledgeable and experienced animal handler."

Discussion of the meaning and intent of some parts of the above wording should help inspectors in their exercise of good professional judgment in specific situations.

A standard of "minimal risk" implies that, while risk should be minimized to the extent practical, all risk cannot realistically be eliminated in all situations. What constitutes "minimal risk" might well be different depending upon a particular circumstance. For example, an exhibition involving the general viewing public should be differentiated from a photo session involving a professional model who interacts with an exotic cat. The standard of "minimal risk" will vary on a case-by-case basis. The focus of any inquiry involving "minimal risk" must be directed towards the facts of the particular case.

The "knowledgeable. . .employee or attendant..." standard requires not only training and/or experience with the species involved but often will require personal knowledge of the individual animal and its unique behavioral characteristics.

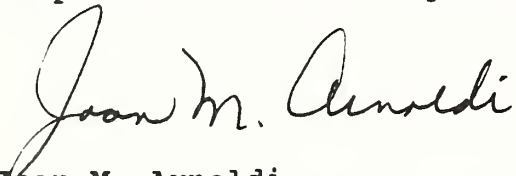
The phrase "dangerous animal" includes, but is not limited to, adult carnivores, primates, and large animals such as bears, elephants, and horned/h hoof stock with reasonable potential to inflict human injury.



The meaning of "direct control" will vary with each species and the level of training of individual animals. Direct control will normally require that an animal be on a leash/tether or be highly trained and under direct voice control. If a person is allowed to come between an animal and its handler, direct control is not being maintained, and the potential for harm to the public and/or the animal exists.

Given the discussion above, if dangerous animals are not under the direct control of a readily identifiable, knowledgeable handler, then public contact should not be permitted. In such situations, protective barriers must be present between the animals and the public. When animals are retained on a leash tied to a secure object, the owner or knowledgeable employee of the exhibitor must be present at all times of public exhibition unless there is also an adequate barrier to physically separate the animals and the public.

Please advise all those exhibiting dangerous animals that compliance with the regulations is mandatory.

A handwritten signature in cursive script, reading "Joan M. Arnoldi". The signature is written in dark ink and is positioned above the typed name and title.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and
Animal Care



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject: Licensing of Pet Shops that Sell or
Exhibit Exotic or Wild Animals

Date: JAN 21 1992

To: ~~REAC~~ Management Team
Animal Care Specialists

This is to clarify the requirement of pet stores to be licensed when they exhibit wild or exotic animals in the store.

This memo cancels the memos dated February 28, 1991, November 13, 1991, and December 2, 1991, concerning this subject.

The pet store must be licensed if they exhibit animals on the premises. The definition of retail pet store excludes "any establishment exhibiting pet animals in a room that is separate from or adjacent to the retail pet store, or in an outside area, or anywhere off the retail pet store premises." The definition also excludes "establishments exhibiting, selling, or offering to exhibit or sell any wild or exotic or other nonpet species..."

If a wild or exotic animal is kept in a back room where the public is not allowed to view the animal, the store is exempt from licensing. If a wild or exotic animal is inside the store area where the public may view the animal, the store will need a license.

Any wild or exotic animal that is visible to the public within a retail pet store is assumed to be for sale or is on exhibit in order to attract customers and business to the establishment. This requires licensing as a dealer (B license), or an exhibitor (C license).

If the wild or exotic animal is not for sale, is kept closed off and not visible to the public or customers (such as a back room, etc.) licensing would not be required.

If the animal is exhibited in a separate room or other area on or off the premise a license is required.

Should you need further information, please contact the Animal Care Staff.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care



Policy - Change of License Class

DEC 13 1991

F. Miava Binkley
Animal Care Specialist
Annapolis, MD

This is to clarify the policy concerning the procedures to follow when a licensee changes the class of license held.

A change of license is a new license, and procedures must be followed to comply with the standards and regulations as with any new application for a license. When a class A dealer changes the type of business to a class B dealer, the licensee must apply for a new license prior to conducting any business involving animals which the dealer does not raise. All deficiencies must be corrected prior to issuance of a new license. A class B dealer may also operate a breeder colony.

In the case of a class C to a class B (or B to C) license, the dealer/exhibitor may be canceled at renewal date unless the facilities pass an inspection for a new license. The dealer/exhibitor is allowed to continue to operate until renewal because an exhibitor may buy and sell animals and a B dealer may exhibit.

The licensee should be advised, prior to termination of the license, that he/she does not meet the definition of the class of license that is being terminated and must therefore obtain a new license. If the licensee can provide proof that they do meet the definition then the license could be continued. The decision between a class B and class C license will depend upon which type of operation is the major part of the business (most income derived from it).

If you need additional information, please advise.

R. L. Crawford
Director
Animal Care Staff
Regulatory Enforcement
and Animal Care

cc:

Morley B. Cook, REAC
William R. DeHaven, SS/AC, REAC, Sacramento, CA
Neil W. Williamson, SS/RE, REAC, Sacramento, CA
Joseph A. Walker, SS/AC, REAC, Tampa, FL
Mario Morales, SS/RE, REAC, Tampa, FL
Valencia Colleton, SS/AC, REAC, Annapolis, MD
John Kincella, SS/RE, REAC, Annapolis, MD
Jerry W. Diemer, SS/AC, REAC, Minneapolis, MN
Paul E. Scheuermann, SS/RE, REAC, Minneapolis, MN
Walter A. Christensen, SS/AC, REAC, Fort Worth, TX
Dennis J. Harkcom, SS/RE, REAC, Fort Worth, TX

APHIS:REAC:RLCrawford:jb:436-7833:12-11-91(Memo.Binkley.License.change)

Identification and Holding Period of Animals
Acquired from Pounds and Shelters

DEC 13 1991

F. Miava Binkley
Animal Care Specialist
Annapolis, MD

This is to follow-up on our conversations with staff members concerning the identification and holding period of animals picked up from pounds and shelters.

The practice of picking up several dogs and transporting them to the dealers facility prior to identification is a violation of the regulations. Part 2.50(b)(1) states in part "When live dogs or cats are held, purchased, or otherwise acquired, they shall be immediately identified." All live animals must be identified at the time of acquisition, this means prior to moving them from the site where they are acquired.

Part 2.101 requires the dealer to hold live animals acquired from a pound or shelter for a minimum of 5 days not including the date of acquisition. If the pound or shelter is a private or contract pound the holding period is 10 days. The practice of taking animals from the pound or shelter, transporting them to the facility and immediately destroying them by euthanasia is in violation of this regulation. Euthanasia is only allowed prior to the end of the holding period for animals that are diseased, emaciated, or injured.

Therefore, if a dealer takes possession of live animals at a pound and does not destroy them prior to departing the pound or shelter, the animals must be identified and held the required number of days.

Should you have questions, please contact the Animal Care Staff.

151
R. L. Crawford
Director
Animal Care Staff
Regulatory Enforcement
and Animal Care

cc:
Morley H. Cook, REAC

APHIS:REAC:RLCrawford;jb:436-7833:12-12-91(Memo.Binkley.Animal.ID)

1. The first part of the report is a general
 introduction to the subject.

2. The second part of the report is a
 detailed description of the methods used.

3. The third part of the report is a
 discussion of the results obtained.

4. The fourth part of the report is a
 conclusion.

5. The fifth part of the report is a
 list of references.

6. The sixth part of the report is a
 list of figures.

7. The seventh part of the report is a
 list of tables.

8. The eighth part of the report is a
 list of appendices.

9. The ninth part of the report is a
 list of footnotes.

10. The tenth part of the report is a
 list of errata.



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject: Tattoo for Identification of Animals

Date:

DEC 23 1991

To: REAC Management Team

The enclosed memo outlines the code system of identification of dealers who wish to tattoo animals in lieu of using tags and collars.

This enclosed memo cancels that part of the memo dated February 5, 1991, stating the license number is required in the ID of animals when using tattoos. The codes, as outlined in the enclosed memo, are the only authorized system of tattooing to be used. Included is a sample letter that may be used for approving the use of a tattoo.

Approval of microchip implants will continue as outlined in the February 5, 1991, memo.

This memo is to become effective immediately, and copies are to be forwarded to all employees. Should you have questions contact the Animal Care Staff.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

(2) Enclosures





United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject: Tattoo ID for Animals
to be Used by Licensees

Date: DEC 23 1991

To: REAC Management Team

Each licensee who wishes to use tattoos to identify his/her animals will be assigned a code for identification to include the type of business and the State in which he/she is licensed. The system will be assigned from the Sector offices with an information copy of the approval sent to the Animal Care Staff.

Examples of the system for different classes of dealers are:

A dealer from Maryland:	MDAA through MDZZ
B dealer from Maryland:	MDBAA through MDBZZ
C dealer from Maryland:	MDCAA through MDCZZ

The breakdown is as follows: MD B AA - MD means the State of Maryland; B means a "B" dealer; AA designates the dealer's identification. This will allow for 676 different codes for any type dealer for any given State.

There is a possibility that 676 codes for "A" dealers will not be sufficient for a few States. Four letter codes will be used for A dealers only unless the number of codes issued in a given State exceeds the 676 possible. If this occurs, simply add the letter A to the dealer code following the State code. An example: the 676th code for an A dealer in Maryland is MDZZ; simply add the letter A to the 677th code which would read MDAAA. This starts the system over with the entire AA through ZZ to use with the letter A preceding. The only four-letter codes issued will be for A dealers. Therefore, anyone viewing a four-letter code will know that it is an A dealer from whatever State code is in the tattoo.

The system will be assigned from the Sector offices in the following order: the first A dealer in any State will be AA with the postal code for that State preceding the dealer's code. The next will be AB and so on until the entire alphabet has been used. For B dealers, simply add the letter B in front of the two letters. Example: the first B dealer in a State will be BAA and so on until the entire alphabet is used.

In addition to the dealer's codes assigned, the dealer will be required to add the necessary numbers to the tattoo to uniquely identify each animal. The breakdown of the system is as follows.

For A dealers, the first two letters will be the postal code for the residing State; the next two letters will be the dealer's identification. Four-letter codes denote an A dealer. An example: MOAA, four letters = A dealer; MO - the State of Missouri; AA = the dealer's identification.



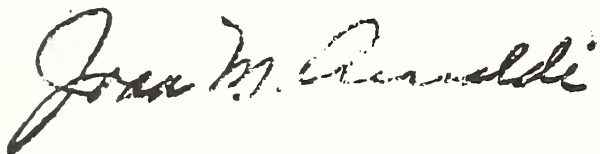
The progression will be as follows:

First "A" dealer for Missouri, MOAA, MOAB, MOAC, MOAD through MOAZ; then MOBA on through MOBZ and so on through the alphabet to MOZZ. For B dealers, the progression will be MOBAA, MOBAB, MOBAC through MOBZZ. For C dealers, insert the letter C for the B as the designated type of dealership such as: MOCAA, MOCAB, MOCAC through MOCZZ.

All animals must be identified according to Part 2.50 which states, "When live dogs or cats are held, purchased, or otherwise acquired, they shall be immediately identified." The use of a tattoo is only one option and no one is required to use a tattoo. However, all licensees must use one of the approved methods of identification. Any licensee that is not properly identifying animals must be written up as deficient according to Part 2.50. We cannot allow anyone to move animals through their facility without properly identifying the animals.

Licensees having animals identified with tattoos that received prior department approval will be allowed to retain the old ID on these animals and use the new ID on any additional animals acquired. The old system of ID will no longer be used following the departure of those animals using the prior means of identification.

This does not affect Registered Research Facilities unless they are selling animals in which case they would be issued a dealer's code.



Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

Reference to Identification of Animals of Licensee # _____

Dear

This is in reference to your request for approval to use a tattoo to identify your animals.

This letter is your authorization to use the following letters as the prefix in your identification instead of your license number. The letters to use to identify your dealership are _____. These letters are the only prefix you are authorized to use if you tattoo your animals. Should you decide to use tags instead, please advise us of the change. If you use tags the information required by Part 2.51 of the regulations will be necessary on all tags and/or collars.

Should you have any questions, please advise.

Sincerely,

Sector Supervisor



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject: Approval of Tattoo System
to be Used by Dealers

Date: FEB 5 1991

To: REAC Management Team

This is to clarify the policy on the approval of the tattoo system for licensees. In the future, approved tattoos must consist of ~~the licensee's USDA license number in addition to~~ a distinctive number that identifies the individual animal. The animal number may not be duplicated or used more than once in a 5-year period. All previously approved tattoos will be allowed until the person goes out of business, the business is sold, or until the person voluntarily changes it.

The tattoos will be approved of by the Animal Care Sector offices; it is not necessary to notify the Hyattsville staff.

Microchip implant systems may be approved on a case-by-case basis by the Animal Care Sector Supervisor. Microchip identification will be approved on a trial basis only and must be restricted to breeding stock of A dealers and research animals. Detailed instructions indicating a single spot for implanting, etc., must be provided. Microchip readers shall be made available at all times for REAC inspectors to verify identification of individual animals.

If you have any questions, please contact the Animal Care Staff.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and Animal Care



Permit Consultation Procedures

18 NOV 1991

Sector Supervisors

This is to clarify the procedure to be used when requests for APHIS consultation on permit applications have been made by either the U.S. Fish and Wildlife Service or the National Marine Fisheries Service.

Consultation requests from these two agencies come to staff. Either Joy deArce or Dr. Garbe will contact the Sector office requesting the appropriate information, e.g., recent inspection reports, measurements, etc. If the Sector Supervisor is unavailable then the Animal Care Specialist will be the point of contact. Upon receipt of the requested information, Dr. Garbe will generate the official APHIS response to the federal agency either recommending issuance or denial of the permit application. A copy of this correspondence will be sent to the Sector Supervisor. If additional information comes to the attention of the Sector office that would alter the recommendation, it should be forwarded to staff for further processing.

I hope this clarifies the procedure through which APHIS will make official recommendations to allied federal agencies concerning consultation requests for wildlife and marine mammal permit applications.

R. L. Crawford
Director
Animal Care Staff
Regulatory Enforcement
and Animal Care

cc:
Morley H. Cook, REAC

APHIS:REAC:JLGarbe:jb:436-7833:11-14-91(Memo.SS.Permit.Consult.Procedures)



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

1 of 2

Room 828, Federal Building
Hyattsville, Maryland 20782

Subject: Federal Expenditures for
Endangered and Threatened Species

Date: NOV 8 1991

To: See DISTRIBUTION

The Fish and Wildlife Service (FWS) is requesting information from all Federal and State agencies regarding their expenditures for the conservation of endangered and threatened species for 1991. The information submitted this year will be used by the FWS to compile their third annual report to Congress on all reasonably identifiable expenditures.

Enclosed is guidance on the type of information FWS is requesting and a copy of the Animal and Plant Health Inspection Service submission for 1990. The guidance is the same as provided last year by the FWS.

In order to allow time for collating the information provided by each program, please submit your data to Environmental Analysis and Documentation by November 22, 1991. If you have any questions concerning this matter, please contact Nancy Sweeney of my staff at (301) 436-8565.

Carl Bausch
Deputy Director
Environmental Analysis
and Documentation
Biotechnology, Biologics, and
Environmental Protection

Enclosures

DISTRIBUTION:

Bobby Acord, ADC, Washington, DC
Joan Arnoldi, REAC, Hyattsville, MD
B. Glen Lee, PPQ, Washington, DC
Lonnie King, VS, Washington, DC
Al Strating, S&T, Washington, DC



GUIDANCE FOR REPORTING EXPENDITURES FOR THE
CONSERVATION OF ENDANGERED AND THREATENED SPECIES

- o In passing the amendment to the Endangered Species Act (ESA), Congress indicated that the requirement was aimed primarily at expenses associated with the development and implementation of recovery for listed species. Thus, the main focus of the report should be funding of projects that support the conservation of endangered or threatened species.
- o Only reasonably identifiable expenditures for listed species will be totalled in this report. Extraordinary accounting procedures to track monies expended on individual listed species are not expected. Amounts need be reported only to the nearest \$1,000, except for smaller sums.
- o Expenditures associated with consultations pursuant to Section 7 of the ESA are covered only to the extent that they are readily identifiable to a particular species. Thus, a formal consultation dealing with a single species, or up to several species where the relative costs are easily divisible, would be subject to reporting.
- o Salary and benefits of an employee working full-time on a single species or whose time devoted to a particular species can be readily identified would be subject to reporting.
- o Examples of reportable expenditures that are directed to individual species include status surveys, habitat management, research, land acquisition, propagation (including surrogate species), and recovery plan development or implementation.
- o Expenditures in a single project devoted to a number of listed species should either be prorated by the agency or not reported. General surveys or projected that cover a large number of species, some of which may not be listed, are not reportable.
- o Only species on the list of Endangered and Threatened Wildlife and Plants (50 CFR Part 17) as of the last day of the Fiscal Year are to be reported. Expenditures made prior to the actual date of listing of a species, but still within the same Fiscal Year, may be reported (e.g., costs of public meetings, notices, late surveys, preliminary recovery efforts). Expenditures for unlisted, separate populations of listed vertebrates cannot be allowed into the report (e.g., southeastern brown pelicans, Atlantic and Gulf coast least terns, Alaska bald eagles, or gray wolves). Amounts for foreign species on the list would be reportable (e.g., grants or contracts carried out in another country).

Mr. Richard N. Smith
Deputy Director
Fish and Wildlife Service
18th & C Streets, NW.
Washington, DC 20240

NOV 14 1990

Dear Mr. Smith:

The Animal and Plant Health Inspection Service has reviewed its activities for Fiscal Year 1990 and has enclosed the identified expenditures for the conservation of specific endangered or threatened species.

We appreciate the guidance you provided on the scope of activities that are to be reported. The expenditures for consultations and other activities on specific species have been reported. Those consultations on large projects and/or numerous species are not reported, as they cannot be broken down by species.

We hope this information will be useful for your annual report to Congress. If you have any questions concerning this matter, please call Nancy Sweeney, Environmental Documentation, Area Code (301) 436-8565.

Sincerely,

/s/ Terry L. Medley

Terry L. Medley, J.D.
Director
Biotechnology, Biologics, and
Environmental Protection

Enclosure

ANIMAL DAMAGE CONTROL

<u>SPECIES</u>	<u>COST</u>
Alligator	\$ 800.00
Bat, Gray	\$ 201.00
Bat, Indiana	\$ 201.00
Bear, Grizzly	\$ 19,791.00
Caribou, Woodland	\$ 40.00
Coot, Hawaiian	\$ 6,000.00
Deer, Columbian White-tailed	\$ 20.00
Duck, Hawaiian	\$ 11,000.00
Eagle, Bald	\$ 7,883.00
Falcon, Peregrine	\$ 4,899.00
Ferret, Black-footed	\$ 1,551.00
Goose, Aleutian Canada	\$ 8,710.00
Fox, San Joaquin Kit	\$ 50,000.00
Moorhen, Hawaiian Common	\$ 6,000.00
Nene	\$ 7,000.00
Ocelot	\$ 54,900.00
Parrot, Bahamian	\$ 500.00
San Clemente Species:	
San Clemente Sage Sparrow	
San Clemente Island Broom Plant	
San Clemente Island Loggerhead Shrike	
Island Night Lizard	
San Clemente Island Bush-Mallow Plant	
San Clemente Larkspur Plant	
San Clemente Indian Paintbrush Plant	\$ 43,874.00
Sandalwood, Lanai	\$ 17,148.00
Shearwater, Newells	\$ 4,000.00
Stilt, Black-necked	\$ 6,000.00
Stork, Wood	\$ 200.00
Tern, Least	\$ 133,514.00
Tern, Roseate	\$ 7,000.00
Turtle, Green Sea	\$ 300.00
Turtle, Hawksbill Sea	\$ 7,500.00
Turtle, Loggerhead Sea	\$ 7,500.00
Vireo, Black-capped	\$ 22,500.00
Wolf, Gray	\$ 11,247.00
Wolf, Red	\$ 300.00

Total: \$ 440,579.00

PLANT PROTECTION AND QUARANTINE

Chilean false larch	\$	1,000
Pitcher plant (<u>Sarracenia</u> spp.)	\$	1,000
Total:		\$ 2,000

SCIENCE AND TECHNOLOGY

California least tern	\$	2,000	(appropriated)
	\$	64,000	(reimbursable, Dept. of Defense)
Hawaiian goose (Nene)			
Hawaiian duck	\$	2,000	(appropriated)
Aleutian Canada goose	\$	4,000	(appropriated)
Bahaman parrot	\$	1,000	(reimbursable, Dept. of State)
Total:		\$ 73,000	

TOTAL: \$ 515,579

PLANT 100

CHLOROPHYLL

PLANT 100



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject:

The use of Bare Metal Wire as compared to Coated Wire
Material used as Flooring in Primary Enclosures.

Date: 31 OCT 1991

To: REAC Management Team

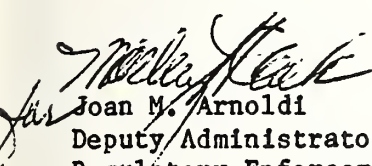
This is to clarify the policy on the need to provide solid resting surfaces when the primary enclosure floors are constructed of bare metal wire.

Wire for this purpose is defined as "open patterned, bare metal wire." This includes commonly used fencing material. When using this type of wire flooring in an animal enclosure, a solid resting platform or surface must be available to the animal contained within the enclosure. In addition, the floor must allow the animal to walk, stand, lie, and sit in a normal comfortable position.

The definition of wire does not include the commonly used wire material that is coated with vinyl or plastic. Section 3.6 requires floors to be constructed in such a manner as to protect the animal's feet from injury. Most coated wire meets this requirement when the enclosure is properly constructed, and the floor is strong and durable enough to prevent bending and sagging. The vinyl coating must be kept in good repair, no tears or rough edges. Floor surfaces that have become damaged enough to cause potential injury must be repaired or replaced. Coated wire floors that are strong and durable enough to prevent sagging and bending will not need an additional solid resting surface.

Any type flooring that allows an animal's feet to slip through the openings, does not protect the animal from injury nor does it allow the animal to sit, stand, walk or lie in a normal comfortable position. Flooring that allows an animal's feet to pass through the floor is prohibited from use by licensed or registered entities under section 3.6(2)(x) of the standards.

Should you have any questions, please contact the Animal Care Staff.


Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care





The Honorable
Mr. Secretary

Washington, D. C.

Dear Sir:

I have

the honor

to acknowledge

the receipt

of your letter

of the 10th

inst.

relative to

the matter

of the 10th

inst.

and in reply

to inform you

that the same

has been

forwarded

to the proper

authorities

for their

consideration

and I am

very respectfully

Yours, Sir,

Very truly,

Very truly,

Very truly,

Very truly,

Very truly,

Very truly,

Very truly,

Very truly,

Very truly,

Very truly,

Very truly,

Very truly,

Very truly,



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject: Recordkeeping Requirements for Dealers
that Only Handle Dead Animals

Date: AUG 8 1991

To: REAC Management Team

This is to clarify the policy for recordkeeping requirements for dealers that only handle dead animals.

Dealers that buy or acquire animals from nonregulated sources that are already dead will only be required to record the date, number and species of animals and from whom the animals are acquired. This includes the complete address and/or the driver's license number or positive identification of the person selling the animals. Records of disposition will require the same type of information, i.e., date, number and species of animals, and to whom they are sold.

Dead animals that are acquired from licensed dealers should also include the USDA official identification of the animals in addition to the above information.

This only applies to animals acquired that are already dead. Live animals will require the complete recordkeeping as prescribed in Part 2.35 and 2.38.

Should you need further information, please contact the Animal Care Staff.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care





Subject: Clarification for Perimeter Fences

Date: July 5, 1991

To: REAC Management Team

This is to clarify and provide guidelines for the perimeter fence requirements of licensees and registrants. It is recommended that careful professional judgement be exercised in carrying out the following guidelines.

In some instances, a fence of 20 feet high in height will not prevent escape of the animals. In other situations, a fence of 6 feet in height would probably be satisfactory. We must, therefore, attempt to establish a barrier which will, under the circumstances present at the time, reasonably restrict the escape of animals from within the animal housing area and reasonably restrict the entrance of native wild animals, feral dogs, or vandals from outside the animal area.

For most captive animals, an 8-foot high fence will reasonably restrict escape or entry. The fence should be constructed of a heavy, closely woven wire (i.e., chain link fencing) or some other material such as wood or concrete that will not allow an animal to easily pass through it or tear it. Listed below are examples of animals and situations which will require perimeter fencing:

1. All dangerous animals, which includes carnivores (i.e, lions, tigers, leopards, wolves, hyenas, dingos, etc.) and bears, must have a perimeter fence of at least 8 feet in height and at least 3 feet from the primary enclosure fence unless a variance has been granted by the Administrator.
2. Nonhuman primates cannot be restricted by a perimeter fence unless the top is also covered. Any perimeter fence for these animals, therefore, would be solely to restrict the entrance of dogs, vandals, etc., which could cause them harm. Effective February 15, 1994, the perimeter fence must be at least 6 feet high or higher, depending on the circumstances involved, in accordance with Sections 3.77 (f) and 3.78 (d) of the Animal Welfare regulations, unless a variance is granted by the Administrator. Moats filled with water will restrict most nonhuman primates but will not restrict entry of dogs and wild animals, etc. Moats may be adequate for primary enclosures, if properly constructed, but are not suitable as perimeter fencing.
3. Areas where all types of animals are caged or confined in a relatively small area, such as city zoos, animal compounds, roadside zoos, etc., must have a perimeter fence of at least 8 feet in height and at least 3 feet from any primary enclosure fence.



4. In regard to auction markets, there should be a perimeter fence around the loading and unloading areas if there is not a perimeter fence around the entire facility. The minimum height of this fence is to be 6 feet. The perimeter fence should be of tensile strength consistent with fences of conventional hog wire.

5. Small zoos or nature centers in a rural-type surrounding which exhibit only smaller, nondangerous animals such as raccoons, rabbits, squirrels, skunks, native deer, etc., may be able to provide reasonably adequate protection with a 6-foot perimeter fence. This must be a judgment decision based on the circumstances and facts available.

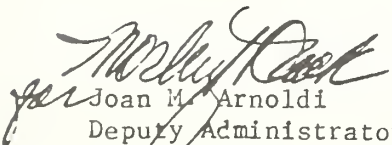
6. Facilities which contain only hoof stock such as deer, antelope, buffalo, zebra, etc., and which allow them to roam large areas of acreage as their primary enclosure, probably will not require a separate perimeter fence if the primary enclosure fence is adequate in both strength, height, and tightness (inability of animals to pass through the fence). A normal three-, four-, or five-strand barbwire fence or electric fence is not adequate in these situations. A tighter fence, such as hog wire, etc., should be used. In this type of enclosure, the animals have room to run and escape from any predators or vandals and are not as liable to injure themselves. This also is a judgmental decision. As previously indicated, the fence should be at least 6 feet in height or higher.

The same type of animals, including farm animals in or on nonagricultural research that are confined within a relatively small area, or in pens, must have an adequate perimeter fence in addition to a primary enclosure fence as there is no means of escape. The perimeter fence lessens the chance of the captive animals being spooked or bothered by dogs, vandals, etc., and injuring themselves.

7. Mobile or traveling exhibits such as petting zoos, circuses, and animal acts need not provide perimeter fences but must have some type of security to keep the public away from dangerous animals and must provide proper supervision when the public is in the animal area.

8. Dogs on tethers, by regulation on and after February 15, 1994, must have a perimeter fence that is sufficient height to keep unwanted animals out. Fences less than 6 feet high must be approved by the Administrator.

These guidelines should cover most situations in the field. Should specific instances or problems arise, contact this office.


Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and
Animal Care



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

2 of 4

Subject: Barrier and Perimeter Fences

Date: FEB 7 1991

To: REAC Management Team

There appears to be some confusion as to the difference between a barrier and perimeter fence.

The enclosed memo written March 13, 1981, addresses the application of perimeter fences, Section E(15) and V(4). This memo should not be confused with the requirements for barrier fences.

Regulations require sufficient distance and/or barriers between exhibits and the viewing public to protect the animals and the public. A fence is not the only acceptable barrier; however, the barrier must limit access to the animals.

A perimeter fence is required to keep predators and other intruders out of the facility and to help prevent escape should an animal succeed in breaking free of its primary enclosure. A barrier is required to protect the viewing public and the animals within the facility, while the animals are enclosed in their primary enclosure. Facilities allowing public contact, such as petting zoos, need not have physical barriers but must have recognizable attendants present during public contact.

Stage acts and exhibits or acts that are not caged need not have physical barriers but must have the animals under the direct control of experienced handlers/trainers and must have a reasonable amount of space between the animals and the public with warning to the public not to intrude into the space.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and Animal Care

Enclosure





March 13, 1981

VETERINARY SERVICES MEMORANDUM 595.13

SUBJECT: Guidelines for Inspection of Exhibitors

TO : Animal Care Specialists
Area Veterinarians in Charge
Veterinary Services

I PURPOSE

The purpose of this memorandum is to provide information and guidance to VS field personnel concerning inspection and licensing or registration of exhibitors under the Animal Welfare Act (AWA).

II CANCELLATION

This cancels Veterinary Services Memorandum 595.13 dated October 2, 1972.

III GENERAL

A. Inspectors should contact the person in charge of the exhibit, show their official United States Department of Agriculture (USDA) identification, and request to inspect the facility and records.

1. Should the inspector be hindered or interfered with during the inspection, or refused entry to some areas, the exhibitor should be advised of the law and the possible consequences of such action. If the exhibitor's attitude is unchanged, the problem should be documented. The Area Veterinarian in Charge (AVIC) should be advised of the circumstances and should then initiate action 2(a) or 2(b) below.

2. Should the inspector be refused admittance for inspection, the exhibitor should be advised of the law and the possible consequences of such action, and the inspector should request to inspect a second time. Should the exhibitor still refuse inspection, the inspector should advise him that other action will be taken and should then contact the AVIC and explain the problem. The AVIC should then take one of the following actions:

a. Document fully and prepare an alleged violation.

b. Arrange for law enforcement officers to accompany the inspector and a compliance officer to the exhibitor, return to the facility, and make the inspection. The refusal and actions taken should be fully documented and an alleged violation case prepared and submitted.

3. Recommendations or requests for a summary suspension of license should be made by telephone to the Regional Director's office and the Animal Care Staff.

B. Inspections must be performed by qualified USDA personnel who are familiar with the AWA, regulations and policy.

C. Prelicensing inspections are the only inspections that will be announced. The first official contact with exhibitors and the prelensing inspection should be by appointment and with the person in charge of the facility. At that time the responsible official will be advised that all future inspections will be unscheduled and arrangements should be made for a person to facilitate inspections if the official is not present. Such previous arrangements will prevent refusal of entry for inspection when the official is not present and will eliminate wasted trips and time. The official should be advised that failure to arrange for such inspection will be construed to be refusal to allow inspection which is contrary to the Act. A contact for entry and inspection will be available during ordinary business hours except for emergency situations, and permanent mailing address, or contact, shall be indicated for traveling exhibitors so that they may be contacted when necessary. Discussion regarding inspection procedures, necessary forms, license fee and annual report shall be conducted on the first visit and an inspection to determine compliance will follow.

D. The facility shall be inspected by following VS form 18-8 to ascertain whether the facility meets minimum standards. Some minor adjustments will be required to utilize VS form 18-8 for marine mammal exhibits. A signed copy of the completed form 18-8 shall be left with the responsible official at the facility and a copy shall be retained in files at the inspecting area office. In the case of traveling exhibitors, a copy of the 18-8 shall also be sent to the licensing area office (home State for the licensee). Areas of noncompliance shall be noted in detail on the form 18-8 and time limits set for correction. Reinspection to determine correction of the deficient areas shall be carried out as near the specified time as possible and in compliance with Management by Objectives, VS Memorandum 576.3 "Timely Submission of Violation Reports" and VS Memorandum 595.18 "Reporting Alleged Violations of the Animal Welfare Act."

E. Inspections must be complete, detailed and deliberate. Inspectors will be held responsible for complete inspection of the facility. The inspector should be alert and observing at all times and should be especially observant to the following:

1. Records - purchases, sales, death losses, additions and present inventory of animals. Discrepancies should be noted and discussed. Water quality and necropsy records for marine mammals should be inspected.

2. Primary enclosures (cages, pools, paddocks, etc.) - size, condition, cleanliness, ventilation, feed, water, odors, pest control, structural strength and maintenance.
3. Animals - appearance of coat and eyes, general condition and attitude, normal or abnormal behavior, signs of illness, injury, improper nutrition or stress.
4. Area surrounding exhibit enclosure - cleanliness, housekeeping, pest control and maintenance.
5. Animals in quarantine or isolation - see items 2, 3, and 11.
6. Housekeeping - general sanitation, cleanliness and maintenance of buildings and grounds, storage of supplies and equipment, pest and rodent control, etc.
7. Unloading, loading and handling facilities for animals being purchased, sold or transported.
8. ~~Transportation vehicles and methods used to crate, hold and transport animals.~~
9. Commissary - source of feed and how stored, quantity and quality offered, pest control, length of time stored, exposure to high temperatures or weather, signs of caking, mold or spoilage, type of feed versus type of animals, cleanliness and sanitation. This is an important area of concern as the quantity, quality and handling of food suffer first when expenses are cut.
10. Kitchen or food preparation area - cleanliness and sanitation, clean and wholesome food suitable to type animals kept, pest control, no hazardous chemicals stored in area. Method of thawing fish for marine mammals. Any vitamin-mineral additives. This area and the commissary will be good indications as to how well the animals are cared for.
11. Veterinary care - regular visits or full-time veterinarian, pharmacy and treatment area available, nursery area for young or newborn, quarantine area, area to isolate sick or injured animals that is quiet, darkened and has little traffic. Health care records for animals and necropsy reports for marine mammals. Contact listed attending veterinarian to ascertain that he does have an agreement with the facility and is aware of his duties and responsibilities.
12. Waste disposal - dead animals and contaminated material, feces, etc., area of disposal and method, drainage. Comply with pollution control and environmental protection laws.
13. Children's or petting zoo - sanitation, cleanliness, condition of animals, any mistreatment of animals by public or any animals dangerous to people, recognizable attendants present to supervise contact areas.

14. Areas where public is not allowed (such as breeding areas) - subject to same requirements as rest of exhibit.

15. Security - sufficient protection of the animals from vandals, predators and the public is required. This is especially important in circuses and roadside zoos. A rope or rail fence around a cage is not adequate protection. The public must also be protected from the animals. This is especially the case with children, as they may run up to cages and put their hands inside to pet the animals.

Additionally, a perimeter fence is required around the facility to restrict the escape of any animals and to prevent or discourage the entrance of roaming dogs, native wildlife, predators, vandals, and to protect the public. Subpart D, sections 3.75 (a) and 3.78 (a) and Subpart F, sections 3.125 (a) and 3.135 are the authority for this requirement. A height of 2.44 meters (8 feet) is considered minimum for a perimeter fence.

16. Water - source and quality, especially in regard to marine mammals.

17. Food - must be of sufficient quality, quantity and nutritive value to sustain the animal in good health under the conditions present (pregnant, nursing, cold, working, etc.). Must be suitable to the type animal involved, must be wholesome and noncontaminated, and must be stored and fed in a manner which does not contribute to or encourage health or parasite problems. Animal carcasses must not be fed to carnivores unless it is known that the animal was healthy and that the carcass was properly handled and refrigerated before feeding.

18. Adequate personnel - a sufficient number of experienced and trained personnel to assure that the minimum required husbandry is maintained on a daily basis. Supervisors and trainers must have the proper background in animal care.

F. Confiscation of animals - in order for animals to be confiscated and/or destroyed, they must be shown to be suffering (life or health in jeopardy) as a result of failure to comply with the Animal Welfare Act, its regulations and standards. If, upon inspection, the inspector believes that animals are suffering and should be confiscated, the procedures set forth in Veterinary Services Memorandum 595.23 "Confiscation, Disposition, and Destruction of Animals..." should be followed. Close contact shall be maintained with the Regional Director, Animal Care Staff, and the Office of the General Counsel (OGC).

G. Licensing or Registration of Exhibitors.

1. Licensing -

(a) If an exhibitor buys, sells, trades, or otherwise obtains or disposes of animals in commerce, he must be licensed (need to decide between class B dealer and class C exhibitor). Refer to definitions under section 1.1(t) and 1.1(w), 9 CFR.

(b) If an exhibitor transports animals over public roads for exhibition purposes, he must be licensed.

(c) If an exhibitor allows viewing by the general public, charges admission, or otherwise receives compensation, as determined by the Secretary, he must be licensed.

2. Registration -

If an exhibitor receives animals by donation or traps them on his own premises, does not transport them for exhibition purposes, does not dispose of the animals in commerce (except releasing back into the wild), and does not receive compensation or allow public viewing for direct or indirect compensation, then he may be registered. Examples of a registered exhibitor are: county nature centers which allow school tours, etc. In the case of stranded or beached marine mammal facilities, they may be licensed as an exhibitor, may be registered as a research facility, or may not fall under regulation, depending on the method of operation.

IV DEFINITIONS AND CLARIFICATION

- A. Animal - refer to 9 CFR 1.1(n)
- B. Wild State - refer to 9 CFR 1.1(p)
- C. Commerce - refer to 9 CFR 1.1(r)
- D. Exhibitor - refer to 9 CFR 1.1(w) (see note below)
- E. Zoo - the American College Dictionary defines a zoo or zoological garden as "a park or other large enclosure in which live animals are kept for public exhibition."

Note : If an "exhibitor" sells, buys or trades more animals than is necessary to: (1) maintain the collection, or (2) add to the collection, or (3) establish a breeding colony, then he should be licensed as a class "B" dealer rather than a class "C" exhibitor. A class "B" dealer is also allowed to exhibit animals.

V TYPE OF EXHIBITORS

A. Zoos, Roadside Zoos, Animal Parks (Fixed Exhibits)

1. A class "C" (Exhibitor) license is required for the majority of zoos (see definition in IV E). However, a small town zoo or nature center which obtains all animals by donation or trapping locally, does not dispose of or transport animals affecting commerce, and receives no direct or indirect compensation, may qualify as a registered exhibitor.

2. All items under III-GENERAL should be kept in mind and must be observed when inspecting. Special attention shall be given to the food storage and food preparation areas and to the food, as these are among the first areas affected when money is a problem. Employees are also cut in budgeting. Special attention must be given to the qualifications of personnel

assigned to care for the animals. The employees must be experienced or trained in animal care, especially the supervisors, and sufficient personnel must be assigned to adequately care for the animals every day.

3. Veterinary care must be closely examined, especially in small zoos and roadside zoos. Interview the indicated attending veterinarian to establish whether zoo officials have contacted him and implemented the required programs and care. Determine whether the veterinarian makes regular calls at the zoo or whether care is limited to emergency situations. Regular visits by the veterinarian as well as proper health, pest and euthanasia programs are required.

4. Security - This is important, especially in small zoos and roadside zoos. There should be adequate barricades or fences to keep small children and other persons away from the cages so that hands and arms cannot be stuck into the cages. Wood and pipe rail fences, etc., are not adequate protection. In some cases, recognizable attendants may be required during times of public contact. Protection against vandals and predators must be adequate. A perimeter fence is required. (See III E, 15.)

5. Problems involving endangered species should be brought to the attention of the U.S. Fish and Wildlife Service, Department of the Interior, in addition to any USDA action.

B. Marine Mammal Exhibits

1. Marine mammals were effectively brought under regulation September 20, 1979. Such facilities must be licensed as exhibitors and must comply with regulations and standards unless a variance has been granted for particular sections of the regulations. Inspectors should be aware of all variances granted in their area of responsibility and the duration of the variance. All facilities must be in compliance by September 20, 1982. Inasmuch as marine mammals have much greater environmental requirements than other regulated species, these inspections should be made by knowledgeable Veterinary Medical Officers, or Animal Health Technicians with special training or experience.

2. Special attention should be paid to the areas of food (quality, quantity and storage) and employees - especially supervisors, trainers and training methods, and water quality. If in doubt about the water quality of a facility, samples should be taken and sent to a laboratory. The results can then be compared to facility records. Areas of veterinary care, health records and necropsy reports must be carefully reviewed.

3. Almost all marine mammals are under permit, as authorized by the Marine Mammal Protection Act of 1972 (PL 92-522), from the Department of Commerce or Department of the Interior. Liaison and satisfactory working relationships must be established and maintained with local offices and personnel of the National Marine Fisheries Service and the U.S. Fish and Wildlife Service. Problems concerning marine mammals should be brought to the attention of these two agencies, in addition to any USDA action. Inspectors

should be familiar with the Interagency Agreement between APHIS, NMFS and USFWS in regard to marine mammals and should make use of the assistance and expertise of these agencies when necessary. Marine mammals regulated by each agency under the Marine Mammal Protection Act (MMPA) are listed below:

Department of the Interior, FWS

Polar Bear
Manatee
Sea Otter
Walrus

Department of Commerce, NMFS

Seals
Whales
Dolphins

4. Jurisdiction - both NMFS and USFWS have jurisdiction over the listed marine mammals through their permit systems, under the Marine Mammal Protection Act, and will handle all violations and legal actions in that regard. USDA will assume authority under the Animal Welfare Act when the animals enter captivity and will handle all violations and legal actions concerning the AWA. When animals have been captured or otherwise restrained in the wild, selections made, and the unwanted animals released back into the wild, the retained animals are then considered to be in captivity and are subject to the Animal Welfare Act and regulations. USDA will assume jurisdiction at the point the captured animals enter U.S. territorial waters in regard to practical field enforcement.

5. Isolation of animals and holding facilities. Special provisions are made for temporary holding facilities under veterinary care (3.110(f)). However, these are social animals (except for polar bears) and the inspector should question the justification for keeping any marine mammal in isolation or in a temporary holding facility over 90 days. If the facility has only one marine mammal or special circumstances exist, then isolation may be justified but should be investigated by the inspector.

C. Animal Trainers - Movie and Television Work.

1. A number of private animal compounds owned by one or more persons are located in certain areas. Most of these animals are wild or exotic, well trained, and are used for movie and television work, advertising campaigns, promotional campaigns, etc. These people may be individualistic and their work may be limited, seasonal, uncertain, and highly competitive. Therefore, inspectors must give special attention to all aspects of the regulations and standards when inspecting these facilities, as many violations may occur since "economy" is a way of life. Feeding practices, veterinary care, housing and sanitation are often problem areas. As in many endeavors, some facilities are well operated and have a good reputation, but others are poorly operated and have poor reputations. There is considerable trading and loaning of animals so that inventories and records must be carefully examined. Periodic inspections during filming, etc., are desirable if dates and location information are available.

D. Traveling Animal Shows - Circuses, Carnivals, Petting Zoos, Animal Acts.

1. These exhibitors are required to have a class C license due to their effect upon commerce and should be contacted whenever they are encountered in any area. If traveling exhibitors are found to be registered as exhibitors, steps should be taken to correct the situation and convert them to a class C license.

2. Due to the mobile nature of these exhibitors, a permanent contact or mailing address must be established on initial licensing so that they may be contacted as necessary. Most large operations go on the road around February and return off the road around November. They may or may not winter in the same place or State each year. Smaller operations often stay on the road all year and may be difficult to contact. Traveling exhibitors should be advised that their license will terminate if not renewed each year (9 CFR 2.5 and 2.7).

3. Upon initial contact, the license status of the unit must be determined and the date of the last inspection established. If the unit has not been inspected within the previous 90 days, an inspection must be made. If the unit has been inspected within the previous 90 days, then it need not be inspected unless conditions or circumstances indicate otherwise. If an inspection is made, a copy of the inspection report (VS form 18-8) must be forwarded to the area office for the State in which the exhibitor is licensed.

4. Whether an inspection was made or not, the itinerary of the exhibit should be determined and copies sent to the area offices of subsequent sites. The involved area offices should be advised whether an inspection in their State is required or not. This will prevent duplication of effort and avoid allegations of harassment by the exhibitor. If the exhibit is a circus or consists of multiple animal acts, each animal act must be contacted to determine if it is licensed and when it was last inspected.

5. When inspections are performed, particular attention must be given to those sections of the regulations which require judgmental decisions regarding the intent of the regulations, such as space requirements and handling. It is important that these be applied in a straightforward manner in order to achieve as much uniformity of inspection as possible.

6. Special attention must be given to the security measures required under sections 3.75(a), 3.78(a), 3.125(a) and 3.135 of the regulations so as to assure the safety of both the public and the animals. Children and others have been badly injured or killed due to lack of proper supervision and/or barriers between the animals and the public. Roped off cages, open feeding doors, etc., do not constitute proper security and are an open invitation for people to pet the animals. Accidents of this type can be prevented by proper security measures and proper supervision. Consideration must also be given to the health and well-being of young animals used in petting zoos, as they are subjected to considerable stress and abuse over a period of time. Proper supervision and rest are required (sections 3.135 and 3.111).

VI INFORMATION AND ASSISTANCE

A. Information and assistance may be obtained from the following:

Animal Care Specialist
Animal Care Staff
National Marine Fisheries Service
Fish and Wildlife Service

B. Policy-setting suggestions should be referred to the Animal Care Staff through the Regional Director so that they may be acted upon by this office.

K R H

K. R. Hook
Acting Deputy Administrator
Veterinary Services

Protection of Exhibition Animals from Predators and the
Public

June 11, 1978

G. V. Peacock, Director
National Program Planning Staff
Veterinary Services

This is in reply to your recent memorandum requesting our opinion regarding "legal authority to compel the exhibitor (zoos) to provide immediate physical protective devices, such as fencing, moats, or other structures, which we (you) deem necessary to provide adequate separation between confined exhibited animals and predators, or the public." It is our opinion that such authority presently exists under the Animal Welfare Act, as amended (7 U.S.C. 2131-2156) and the regulations and standards promulgated thereunder (9 CFR 1.1., et seq.).

Assuming the zoos you refer to are "exhibitors" licensed under the Act, they are subject to the penalty provisions of section 19 thereof if they are in violation of the Act or any regulation or standard issued thereunder. Specifically, any such exhibitor would be subject to a suspension or revocation of his license, to a cease and desist order, and to civil penalties. Any person knowingly failing to obey a cease and desist order would be subject to a \$500.00 penalty for each offense. Furthermore, a knowing violation of the Act could subject the violator to criminal fines and imprisonment.

In failing to house goats, deer, llamas and similar animals so as to adequately protect them from predators and from the public, the zoos are in apparent violation of Subpart E, sections 3.100(a) and 3.110 of the standards (9 CFR 3.100(a) and 3.110). They would, therefore, come under the penalty provisions discussed above. Subpart E of the standards contains specifications for the humane care of warm blooded animals other than dogs, cats, rabbits, hamsters, guinea pigs, and nonhuman primates. Subpart D contains similar specifications for nonhuman primates and other subparts cover the other animals excepted under Subpart E. Section 3.100 of Subpart E specifically states that housing facilities for animals "shall be structurally sound and shall be maintained in good repair to protect the animals from injury...". The section also states that the facility containing the animals must be constructed "of such material and of such strength as appropriate for the animals involved".

Section 3.110 of Subpart E dealing with the handling of animals contains provisions which provide for the protection of animals from harm or injury by the public.

Therefore, in light of the above discussion, you may advise the exhibitors involved that in order to be in compliance with the Act, the regulations and standards, they must provide adequate protection in the form of fences, moats, etc. around facilities (indoor or outdoor) housing deer, goats, llamas, and similar animals. You may also wish to amend the regulations and standards to deal with such protective devices or structures more specifically. Nevertheless, it is our opinion that you have the authority to demand that the animals be physically protected from injury by other animals or by the public.

If a zoo or municipality responsible for such zoo refuses to comply with your request, the most logical way to proceed would be through the cease and desist route. There is no reference in the Act to injunctive relief, therefore that would not be a practical alternative.

If you have any further questions regarding this subject, please do not hesitate to contact us.

/s/John C. Chernauskas
JOHN C. CHERNAUSKAS, Director
Marketing Division

cc: E. Silverstein, OGC
H. Carter, OGC
D. Schwindaman, APHIS
F. Germaine, APHIS
OGC:ASanofal:11:LAWS:6/12/78



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

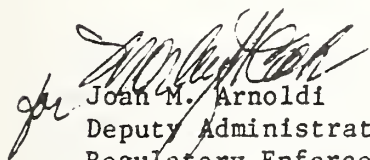
1 of 2

Subject: Classification of the Owl Monkey
as a Group 2 Species

Date: JUL 31 1991

To: REAC Management Team

Attached is a copy of a letter from Dr. Nelson Garnett, OPRR, NIH, indicating that the Owl monkey is to be considered a Group 2 species of primate regardless of its weight, and the Cynomolgus monkey is a Group 3 species. This decision was reached after considerable consultation and discussion, and it is to be followed when enforcing nonhuman primate housing standards. Please see that your inspectors receive this information for guidance.


Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

Enclosure





National Institutes of Health
Bethesda, Maryland 2089
Building: 31
Room: 5B59
(301) 496-7163

July 18, 1991

CONFIDENTIAL

Dear :

This is in response to your June 12 letter to Dr. John Miller concerning nonhuman primate cage sizes at the Eye Research Institute (ERI).

The National Research Council's Guide for the Care and Use of Laboratory Animals (Guide) describes the minimum recommended cage sizes for various groups of nonhuman primates. The Guide classification is based on species groupings according to typical adult weight range, skeletal size, and the behavioral needs of the species. The Office for Protection from Research Risks (OPRR) has determined, in consultation with other professionals, regulatory agencies, and accrediting bodies, that the owl monkey is a Group 2 species. The 21 inch cage height and 2.25 sq. ft. floor area described in your letter are clearly inadequate for this species, especially considering their reclusive nature (need for a nest box in cage), long tail, and arboreal habits (need for elevated perches). These cage sizes will also fail to meet the new requirements of the U. S. Department of Agriculture (USDA) Animal Welfare Act regulations.

The cynomolgus monkey is a Group 3 species and also requires more cage space than what is reportedly being provided at your institution.

Inadequate cage sizes for nonhuman primates represent a serious and continuing noncompliance with the Public Health Service Policy on Humane Care and Use of Laboratory Animals (PHS Policy).

Please provide this Office with a specific plan and schedule for correcting this major deficiency. Please also include a copy of the ERI plan for environmental enhancement adequate to promote the psychological well-being of nonhuman primates at your institution as required by USDA.


Page 2

The ERI Animal Welfare Assurance will remain in a Conditionally Approved status until this matter is resolved.

A response by August 16 is required.

Please call if I may be of assistance.

Sincerely,


Nelson L. Garnett, D.V.M.
Chief, Compliance Branch
Division of Animal Welfare, OPRR

NLG/mp

Clarification on Inspection
of Traveling Exhibitors

JUL 1 1991

REAC Management Team

This memorandum is to clarify the procedures for the inspection of traveling exhibitors outside the home Sector.

I. Requested Inspections

1. The Sector office in which the traveling exhibitor holds a license (home Sector) will be responsible for forwarding copies of the itinerary and most recent inspection report to any Sector where they request an inspection to be performed.

2. After an inspection is conducted, the field inspector will forward the inspection report to his/her own Sector office. That Sector office will be responsible for submitting the original inspection report to the home Sector and retaining a copy for its own files.

3. The home Sector will review the inspection report and will arrange for any reinspections that may be necessary.

4. The home Sector is responsible for ensuring that all traveling exhibitors are inspected on a timely basis.

5. If major noncompliant items are observed during the inspection, the inspector shall notify his/her Sector office, then either notify the home Sector directly, or have his/her own Sector office notify the home Sector. Prompt action may be necessary and both Sectors involved should be aware of the situation so that REAC may respond in a timely fashion.

II. Ad Hoc Inspections

1. When a field inspector notices a traveling exhibitor in his/her area:

- a. Contact own Sector office to determine need for inspection OR
- b. Contact home Sector, if known, to determine need for inspection OR
- c. Stop and make inquiries and/or an inspection. If conditions are serious enough to warrant immediate inspection, the inspector should do so. If Sector office contact is impossible, inquiries should be made to determine need for inspection.

2. When a field inspector makes an inspection/inquiry, he/she should first request a copy of the most recent inspection report.

a. If an inspection has been made within the past 90 days, no noncompliant items were noted and no obvious problems are apparent, no additional inspection is necessary.

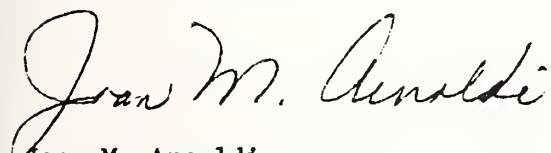
b. If the previous inspection date exceeds 90 days with no noncompliant items, an inspection should be made. If major noncompliant items are noted, proceed as in I(5) above. If minor items, follow I(2) above.

c. If the inspection report contains noncompliant items past the correction date, conduct an inspection. If major items, proceed as in I(5) above. If minor items, follow I(2) above.

d. If the previous inspection report contains noncompliant items still within correction date limits, evaluate as follows: Obvious problems, conduct inspection but remember to use Category II, items being corrected, on the

appropriate items. If no obvious problems, an inspection is not necessary at that time. Check their itinerary for their location at the time correction falls due and forward that information to his/her own Sector office. The Sector office will then forward the information to the home Sector office in a timely fashion.

If you have any questions, please contact your Sector office.

A handwritten signature in cursive script, reading "Joan M. Arnoldi". The signature is written in dark ink and is positioned above the typed name.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and Animal Care

APHIS:REAC:RLCrawford:jda:436-7833:6-10-91(Inspection.of.Traveling.Exhibitors)



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject: Licensing of Exotic or Wild Animal Breeders

Date: JUL 1 1991

To: REAC Management Team

This is to clarify the policy as to who needs to be licensed as an "A" dealer when he/she breeds and sells exotic animals such as deer and elk.

In order to ensure uniform application, the Animal Care Staff has decided that the following policy is necessary.

Exotic animal breeders who are in the business of raising animals primarily for food, fiber, and breeding purposes may not need a USDA license. Therefore, the Animal Care Staff has determined that a breeder who only sells an occasional animal for covered purposes should not be licensed. However, when a breeder has sold 10 or more animals in a given 12-month period for covered purposes, he/she should be licensed.

The sale of large, carnivorous animals and other dangerous animals requires a license. These animals are not in the usual categories that are very close to domesticated animals, nor are they normally sold into the exempt categories of food and fiber. The policy only applies to hoofstock such as deer, elk, antelope, and like animals.

This only applies to breeders who when licensed will be an "A" dealer. The buying and reselling of wild or exotic animals always requires a "B" dealer's license.

This should cover most situations. However, should you have specific situations, please check with the Animal Care Staff.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care





Subject: Policy for Licensing an Exotic Animal Breeder

Date: **APK 4 1991**

To: REAC Management Team

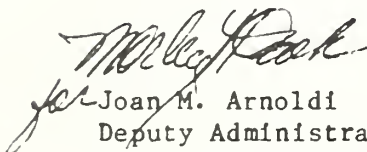
This is to clarify the policy for licensing an exotic animal breeder as an A dealer.

Persons (breeders) selling an animal direct to licensees, registrants, or individuals for covered purposes need a license. The type of license needed for such activities is a class A dealer license. Direct sales are determined by reviewing the record of sales by the breeder. This may be accomplished by a review of B dealer records as well as the records of auction markets. There must be proof of direct sales, for covered purposes, in order for us to require a breeder to become licensed. The sale of animals at an auction is not considered to be direct. A legal ruling in a court case determined that consignments to an auction are not sufficient cause alone for requiring a license under the Animal Welfare Act. A person consigning animals to an auction does not know for what purpose, or to whom, the animals will be sold.

Direct sales for food, fiber, breeding, etc., shall not be cause for licensing.

This policy does not affect B dealer requirements as the buying and reselling of exotic animals directly to individuals or facilities requires a license under the Animal Welfare Act.

Should you need further information, please contact the Animal Care Staff.


for Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

cc:
Staff Officers, AC
Staff Officers, RE





United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject: VS Memorandum 595.6

Date: JUN 17 1991

To: REAC Management Team

This is just to reiterate that VS Memorandum 595.6 "Automatic Termination of License - Animal Welfare (9 CFR, Section 2.5(b))" was canceled by Veterinary Services and will not be reissued by REAC.

The information that was contained in this memorandum has been included in Part 2, Section 2.5(b) of the regulations.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care





Subject: Clarification - Policy on Pre-License Procedures

Date: MAR 7 1991

To: REAC Management Team

This is to clarify the above policy dated November 27, 1990, concerning a maximum of three pre-license inspections within a 90-day period.

When the inspector makes the first pre-license inspection the clock starts. The applicant then has 90 days and a maximum of two additional inspections (three total inspections) in which to come into compliance with the regulations and standards. If the applicant fails the third inspection, he/she is not allowed to apply again for at least 6 months. If the applicant is only ready for one additional inspection during the 90-day period following the initial inspection (two total inspections) and fails that inspection, he/she is not allowed to apply again for at least 6 months.

The applicant has 90 days from the initial pre-license inspection to come into compliance. If the applicant has not requested and arranged for the second and third inspection within that period, and passed inspection, he/she must reapply 6 months later. During the intervening period the applicant cannot engage in regulated business.

The original pre-license inspection should be arranged within a reasonable time period after receiving the applications. The following reinspections should be scheduled by the REAC inspector and the applicant, and be performed within the next 90 days. As the applicant cannot do business until licensed, REAC has the obligation and the responsibility to carry-out these inspections in a timely manner. Pre-licensing inspections should be carried out with the same priority as regular compliance inspections. Failure to accomplish the necessary inspections within the 90-day period should be the fault and responsibility of the applicant, not REAC.

Should special circumstances appear to justify the extension of the 90-day period for licensing, the circumstances and extension must be approved by the Sector Supervisor on a case-by-case basis. Such extensions should be very limited.

If further clarification is needed, please contact the Animal Care Staff.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

cc:
Staff Officers, AC/RE



Policy on Pre-License Procedures
--Correct Memo to Follow--

Jan 11, 1991

REAC Management Team

You have received or will receive two memos on "Policy on Pre-License Procedures" - Please toss the one dated January 8, 1991.

The correct memo to follow is the one dated November 27, 1990.

If you need another copy of the November 27, 1990, memo, please contact Colleen FTS 436-8323.

Thanks.

/s/

Joan M. Arnoldi
Deputy Administrator
REAC



Subject: Policy on Pre-License Procedures

To: Sector Supervisors, REAC

Date: NOV 27 1990

After a conference with the Office of General Counsel, it was decided the method for licensing of facilities to conduct covered activities under the Animal Welfare Act is as follows:

1. The applicant will submit an application and a \$10.00 application fee before a pre-license inspection is conducted.
2. Inspectors will be contacted by the Sector Office to schedule a pre-license inspection of the facility. No more than three announced inspections will be allowed within a 3-month period for the purpose of licensing.
3. A license applicant will be denied authorization to conduct regulated activities until the license is issued.
4. If an applicant fails the third pre-licensing inspection, all fees will be forfeited. It will be not less than 6 months before an applicant will be allowed to apply for a license again.
5. Written programs of veterinary care must be submitted before, along with, or within 15 days after the first pre-licensing inspection. This program of veterinary care (PVC) must include at least one on-site visit by the attending veterinarian each year. A license will not be issued until an acceptable PVC has been received.
6. Upon receipt of the inspection with no deficiencies, the appropriate licensing fee, and the PVC, a license to operate will be issued from the Sector office.

In addition to the increased license fee schedule, please note the \$10.00 application fee must be paid each year at the time of renewal. Thus the minimum fee is $\$30.00 + \$10.00 = \$40.00$.

A copy of this memo may be included in pre-license packets to ensure that the person applying for a license is informed as to the set policy for licensure.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and Animal Care





Subject: Exemption from Licensing under the 24 Dog/Cat Rule.

Date: 28 FEB 1961

To: REAC Management Team

This is to clarify the 3 breeding female and the 24 dog/cat rule.

The 3 breeding female rule applies to the sales of dogs and cats wholesale for use as pets or exhibition. This rule is intended to allow hobby breeders to sell offspring wholesale for pets or exhibition. Someone with only 3 breeding females could conceivably sell more than 24 dogs/cats into the pet channels.

Example: A person with 3 breeding females who sells 30 puppies to a dealer for pets, is exempt. The same person who sells 26 dogs to a dealer for research or to a research facility must be licensed.

The 24 dog rule allows someone to have as many breeding females as they desire so long as they do not sell more than 24 dogs/cats for research or to a research facility and do not sell dogs/cats for use as pets or exhibition.

Example: A hunter who has 10 breeding female dogs, and only sells 24 dogs to a dealer for research, is exempt. This same hunter selling any puppies or dogs to a dealer or pet shop for resale as pets would need to be licensed.

A person selling animals who needs to be licensed and does not first acquire one is in violation of the regulations. The person to whom he/she sells is not responsible for this person not being licensed.

This should clarify the rules, however, if further information is needed please contact the Animal Care Staff.



R. L. Crawford
Director
Animal Care Staff
Regulatory Enforcement
and Animal Care

cc:
Staff Officers, RE
Staff Officers, AC





United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject: Licensing of Exotic Animal Auction Markets

To: REAC Management Team

Date: FEB 1 1991

This will establish the policy concerning exotic animal auction markets and dealers.

All auction markets that are selling exotic or wild animals are required to be licensed. The transportation standards in Subpart F will be applied at the market. The animals, once received by the auction market, will be considered the responsibility of the market. If the persons delivering the animals are licensed, compliance will be the responsibility of both the dealer and the market. If the persons delivering the animals are not licensed, the market accepts the responsibility for the transport devices, vehicles, and/or enclosures by accepting the animals in the market. Once the animals are accepted by the auction market, the responsibility for the standards are accepted by the market operator.

The following scenario is an example of this policy.

A carrier accepts a dog from an unlicensed person in a kennel that is too small for the animal. The carrier is responsible. The auction market will be responsible for an animal accepted into the market. We have no authority over an individual until he/she is performing covered activities.

The normal standards for cleaning, sanitation, and general health and well being of the animals will be monitored according to the standards in Subpart F. Noncompatible animals are not to be held in the same enclosure nor close to other animals that may cause them stress.

There should be a perimeter fence around the loading and unloading areas if there is not a perimeter fence around the entire facility. The minimum height of this fence is to be 6-feet. The perimeter fence should be of tensile strength consistent with conventional hog wire fencing.

All caged and/or dangerous animals must be held in a manner that ensures the safety of the public and the animals.

All auction markets should be contacted as soon as it is practical, and proper steps should be taken to get them licensed. This policy will apply until standards have been written and become effective.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and Animal Care



Policy Request

January 14, 1991

J. A. Walker
Supervisor - Animal Care
Southeast Sector

This is in response to Dr. Richard O. Overton's request dated November 1, 1990 (copy enclosed), to grant Dr. Linn Andrews, VMO - Animal Care, Puerto Rico, authority to require exhibitors to provide a consulting veterinarian and require foreign circuses to send official letters of notification to REAC, Hyattsville, Maryland, prior to their arrival at a United States port.

The REAC Staff is of the opinion that Section 2.40 of 9 CFR, Code of Federal Regulations, can be enforced while exhibitors are in travel status. If an animal requires immediate medical attention, then it must be provided by the licensee. The regulations do not limit their enforcement to the home base location. Compliance must be maintained at all times; however, a specific and designated veterinarian at each point of exhibition when a veterinary medical need does not currently exist, we believe, would be beyond the intent of the regulations.

Any animal exhibitor entering the United States to exhibit animals to the public must comply with regulations and standards and be licensed. As we cannot license foreign citizens under the Animal Welfare Act, we require that the U.S. agent representing the circus be licensed and be responsible for the exhibitor. In regard to the requirement for advising our Agency prior to entering the United States with exhibition animals, we are working on a better means of being informed about the entry of foreign animals. We anticipate any improvement in this respect will be in cooperation with another Federal agency. We will advise Animal Care Sector Supervisors of any important changes in this regard.

/s/Morley H. Cook

Morley H. Cook
Associate Deputy Administrator
Regulatory Enforcement and Animal Care

Enclosure

cc:

G. L. Brickler, REAC, Minneapolis, MN
W. A. Christensen, REAC, Ft. Worth, TX
W. R. DeHaven, REAC, Sacramento, CA
V. Colleton, REAC, Annapolis, MD
R. L. Crawford, REAC, Hyattsville, MD
J. Garbe, REAC, Hyattsville, MD

APHIS:REAC:MHCook:sg:436-4980:1-10-90 (policy/request/overton)



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject: Procedures to Follow In a Licensee's
Change of Business Site

Date: DEC 5 1990

To: REAC Management Team

This is to clarify the policy and proper procedures to follow when a licensee moves to a different business site:

If a licensee moves the entire business and notifies the Sector office within the 10-day limit, the Sector office will schedule a new facility site inspection as soon as possible. The licensee will not be allowed to do business for covered activities at the new site until an inspection has been performed with no deficient areas noted. If a licensee performs covered activities at the new site prior to passing an inspection, he/she is in violation of Part 2.8 of the regulations. If the licensee is notified that the preliminary inspection was not passed and then performs covered activities, a violation case should be initiated for dealing without a license at the new site.

If the licensee moves and does not notify us, he/she is in violation of Part 2.8 for not notifying the USDA within 10 days and also Part 2.1 for dealing without a license at the new site. Each licensee should be handled on a case-by-case basis as far as compliance action is concerned.

These procedures will be applied whether the move is within a State or out of State. If only the animals have been moved and the business address remains the same, the only thing affected is the new site. The license is still in effect; however, the new site has not been approved and no business may be conducted for covered activities until approval has been given by the Sector office for the new site.

Approving a new site is handled in the same manner as any additional site for the licensee would be handled. There is no application fee or increase in the amount of license fees for the year. The annual renewal date stays the same.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and
Animal Care



Subject: Termination of License of Dealers
Who Move or Change Their Operation

Date: AUG 27 1990

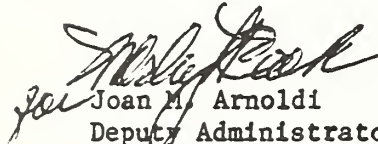
To: REAC Personnel

There seems to be some confusion concerning the proper interpretation of Part 2.5 when a licensee moves his operation to another site.

It appears that some licenses have been terminated because a licensee moved to another location and did not notify the sector office or did not pass an inspection at the new site. This action is against the due process guaranteed in the Animal Welfare Act. Before a license can be terminated, a person must be afforded the opportunity of a hearing. The only exceptions to this are voluntary termination and termination for nonrenewal.

If a licensee moves his operation to another site, his license is not valid at that site until the Sector Supervisor is notified and an inspection is passed at the new site. The licensee can continue to operate at the old site but not at the new site.

If a person operates at a site that has not been approved by an inspection with no deficiencies, he should be written up for operating without a license at that site.


Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

Subject: Determination of Need for Licensing or Registration
for Antibody Production/Serum Collection

Date: AUG 28 1990

To: REAC Personnel

A number of questions have been raised over the past several months concerning the proper method of handling antibody producers and serum collectors under the Act. The Animal Care Policy Committee has deliberated on this issue and has reviewed the regulations and standards in this regard.

In 9 CFR, Part 1, the definition of "Research Facility means any school... institution, organization, or person that uses or intends to use live animals in research, tests, or experiments, and that (1) purchases or transports live animals in commerce, or (2) receives funds under a grant, award, loan, or contract..."

The definition of "Dealer means any person who, in commerce, for compensation or profit, delivers for transportation, or transports,...buys, or sells, or negotiates the purchase or sale of: Any dog or other animal whether alive or dead (including unborn animals, organs, limbs, blood, serum, or other parts) for research, teaching, testing, experimentation,..."

The definition of "Commerce means trade, traffic, transportation, or other commerce:

(1)

(2) Which affects the commerce described in this part."

In view of the above, the following findings have been made:

(1) Facilities which produce antibodies or antisera inject animals with antigens to obtain a desired immune response from the animal. This immune response is then harvested from the animal(s) as antibodies or antisera. Not all animals are good antibody producers and only those animals which produce an acceptable level of antibodies are kept as producers and bled on a regular basis.

These facilities are "testing" the animals for their immune response and are selecting animals for production based on the response to this test. These facilities must, therefore, be registered as a research facility by definition. Licensing is not required.

(2) Facilities which harvest or produce only normal blood or sera are not testing animals but are selling parts of the animal which is maintained for this purpose. These facilities meet the definition of a dealer and must be licensed as such.

(3) Under the definition of "Commerce," those facilities with closed breeding colonies who produce their own animals "affect commerce" by the sale of their product and by the purchase of animal foods, health products, etc. A closed breeding colony, therefore, does not exempt them from the definition of dealer or research facility due to the effect on commerce. They must be licensed or registered as appropriate.

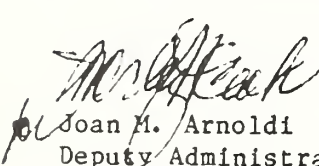
(4) The major or primary purpose of the animals' use must also be considered for licensing as a serum or blood producer. If the animals (usually rabbits) are raised and slaughtered for meat (food/fiber) and the blood/serum is collected at slaughter and sold, then licensing would not be required as food/fiber is the primary purpose for the animals.

However, if the animals are being maintained and bled on a regular basis, or are exsanguinated and then disposed of in non-food/fiber channels, licensing would be required as the primary purpose of the animals is for blood/serum.

The end use of the animal(s) does not affect registration as a research facility as they are "testing" all animals for the desired response and thus qualify as a research facility prior to disposal of the animals.

(5) Those facilities using domestic farm animals, such as sheep and goats, are subject to the same criteria as above and must be licensed or registered as appropriate.

If there are additional questions in regard to blood/serum/antibody production, please contact this office.


Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject: Private or Contract Pounds' Requirements for Licensing

Date: NOV 27 1990

To: Sector Supervisors, REAC

There appears to be some questions concerning the requirements for contract or private pounds to be licensed.

The questions are:

Q. Are private or contract pounds subject to the inspection of facilities?

A. When a dealer operates a pound, it is considered a site of the dealer and is subject to inspection as any site of the dealer would be. A contract or private pound selling animals wholesale or to research is required to be licensed as a dealer and is subject to all of the regulations.

Q. When are animals required to be identified at the private pound?

A. When the animals are acquired.

Q. When animals are dropped off at the pound and there is no way to identify the owner, how do you record the acquisition?

A. The records should reflect that the animals were dropped off and the owner is unknown.

Q. If a "B" dealer buys more than 24 dogs or cats from an unlicensed breeder in a given year, who is in violation of Federal regulations?

A. The person selling dogs or cats is in violation if he/she sells sufficient animals to require that he/she becomes licensed and said license is not acquired.

Hopefully this will answer your questions; however, if you need further information, please advise.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and Animal Care





United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject: Coverage of Prairie Dogs Under the
Animal Welfare Act

Date: **OCT 18 1990**

To: D. E. Beasley
Animal Care Specialist
Annapolis, MD

This is in response to your inquiry as to the requirement of persons selling prairie dogs to become licensed.

Anyone selling prairie dogs is required to become licensed as the prairie dog is a wild animal and is not exempt from being covered.

If you need further information, please advise.

Robert E. Hogan
Animal Health Technician
Animal Care Staff
Regulatory Enforcement and Animal Care





Subject: Clarification of Recordkeeping Requirements
for Exhibition Animal Facilities

Date: **OCT 17 1990**

To: Sector Supervisors

Questions regarding the recordkeeping requirements for exhibition animal facilities have recently arisen. APHIS policy is the following.

Licensed exhibitors are required to maintain records that are readily accessible and that fully and correctly disclose certain information (see 9 CFR 2.75(b)). These records must be maintained on offspring as well as adult animals. Maintaining an accurate census of the population within a facility requires the inclusion of information related to the number of births and deaths within any given time. Inspectors must be able to look at the facility's records and assess morbidity and mortality rapidly and accurately.

Facilities, therefore, must maintain census information on all animals housed therein from the date of birth forward. Maintaining information concerning animals less than 30 days old only on veterinary records does not fulfill the requirement that the records be accurate and readily accessible. A facility must maintain census information separately from veterinary records.

Jo Anne L. Garbe

Jo Anne L. Garbe, DVM JD
Staff Veterinarian, Exhibit/Zoo Animals
Animal Care Staff
Regulatory Enforcement and Animal Care



Form 10-1
2-1-2

7-1-2

1-1



Subject: Compliance with Departmental Regulation 9500-4
Fish and Wildlife Policy

Date: JUL 11 1990

To: Frank C. Vollmerhausen, Director
Resource Management Systems
and Evaluation Staff

In response to your memorandum of June 12, 1990, I have reviewed the Animal Care (AC) program for compliance with the Endangered Species Act (ESA) of 1973. On March 13, 1981, Veterinary Services (VS) promulgated VS Memorandum 595.13, Guidelines for Inspection of Exhibitors. This document contains several references to agency responsibility to notify interested Federal entities of AC activity involving endangered species. See VS Memorandum 595.13(V)(A)(5), (V)(B)(3), and (V)(B)(4) for specific details (copy enclosed). This memorandum is currently being reviewed and updated where appropriate. All AC personnel have been advised to consult with the U.S. Fish and Wildlife Service (FWS) on AC activities that may affect endangered species.

In 1979, the Agency entered into an agreement with the National Marine Fisheries Service (Department of Commerce) and the FWS (Department of the Interior) for the purpose of articulating the responsibilities of the parties in enforcing the Marine Mammal Protection Act and the Animal Welfare Act. The agreement outlines the authority of each agency to act, as well as the responsibility of each agency to inform the parties to the agreement of pertinent information. Inasmuch as the animals involved in this agreement are protected, not only under the Marine Mammal Protection Act but also under the ESA, the Agency's Section 7 responsibilities to notify and cooperate with other Federal agencies are fulfilled. A copy of this agreement is enclosed for review.

Historically, the AC program has not required written documentation of compliance with the ESA from its Sector offices. To be in compliance with Departmental Regulation 9500-4, starting at the end of FY 1990, AC will provide an annual report to USDA's Fisheries and Wildlife Working Group indicating compliance or noncompliance with the ESA.

I hope the information provided above has been helpful. If you require additional information regarding this matter, please contact Jo Anne Garbe, Animal Care Staff, Hyattsville, Maryland, Telephone 436-7833.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

cc:
REAC Management Team

Enclosures





March 13, 1981

VETERINARY SERVICES MEMORANDUM 595.13

SUBJECT: Guidelines for Inspection of Exhibitors

TO : Animal Care Specialists
Area Veterinarians in Charge
Veterinary Services

I PURPOSE

The purpose of this memorandum is to provide information and guidance to VS field personnel concerning inspection and licensing or registration of exhibitors under the Animal Welfare Act (AWA).

II CANCELLATION

This cancels Veterinary Services Memorandum 595.13 dated October 2, 1972.

III GENERAL

A. Inspectors should contact the person in charge of the exhibit, show their official United States Department of Agriculture (USDA) identification, and request to inspect the facility and records.

1. Should the inspector be hindered or interfered with during the inspection, or refused entry to some areas, the exhibitor should be advised of the law and the possible consequences of such action. If the exhibitor's attitude is unchanged, the problem should be documented. The Area Veterinarian in Charge (AVIC) should be advised of the circumstances and should then initiate action 2(a) or 2(b) below.

2. Should the inspector be refused admittance for inspection, the exhibitor should be advised of the law and the possible consequences of such action, and the inspector should request to inspect a second time. Should the exhibitor still refuse inspection, the inspector should advise him that other action will be taken and should then contact the AVIC and explain the problem. The AVIC should then take one of the following actions:

a. Document fully and prepare an alleged violation.

b. Arrange for law enforcement officers to accompany the inspector and a compliance officer to the exhibitor, return to the facility, and make the inspection. The refusal and actions taken should be fully documented and an alleged violation case prepared and submitted.

3. Recommendations or requests for a summary suspension of license should be made by telephone to the Regional Director's office and the Animal Care Staff.

B. Inspections must be performed by qualified USDA personnel who are familiar with the AWA, regulations and policy.

C. Prelicensing inspections are the only inspections that will be announced. The first official contact with exhibitors and the prelicensing inspection should be by appointment and with the person in charge of the facility. At that time the responsible official will be advised that all future inspections will be unscheduled and arrangements should be made for a person to facilitate inspections if the official is not present. Such previous arrangements will prevent refusal of entry for inspection when the official is not present and will eliminate wasted trips and time. The official should be advised that failure to arrange for such inspection will be construed to be refusal to allow inspection which is contrary to the Act. A contact for entry and inspection will be available during ordinary business hours except for emergency situations, and permanent mailing address, or contact, shall be indicated for traveling exhibitors so that they may be contacted when necessary. Discussion regarding inspection procedures, necessary forms, license fee and annual report shall be conducted on the first visit and an inspection to determine compliance will follow.

D. The facility shall be inspected by following VS form 18-8 to ascertain whether the facility meets minimum standards. Some minor adjustments will be required to utilize VS form 18-8 for marine mammal exhibits. A signed copy of the completed form 18-8 shall be left with the responsible official at the facility and a copy shall be retained in files at the inspecting area office. In the case of traveling exhibitors, a copy of the 18-8 shall also be sent to the licensing area office (home State for the licensee). Areas of noncompliance shall be noted in detail on the form 18-8 and time limits set for correction. Reinspection to determine correction of the deficient areas shall be carried out as near the specified time as possible and in compliance with Management by Objectives, VS Memorandum 576.3 "Timely Submission of Violation Reports" and VS Memorandum 595.18 "Reporting Alleged Violations of the Animal Welfare Act."

E. Inspections must be complete, detailed and deliberate. Inspectors will be held responsible for complete inspection of the facility. The inspector should be alert and observing at all times and should be especially observant to the following:

1. Records - purchases, sales, death losses, additions and present inventory of animals. Discrepancies should be noted and discussed. Water quality and necropsy records for marine mammals should be inspected.

2. Primary enclosures (cages, pools, paddocks, etc.) - size, condition, cleanliness, ventilation, feed, water, odors, pest control, structural strength and maintenance.
3. Animals - appearance of coat and eyes, general condition and attitude, normal or abnormal behavior, signs of illness, injury, improper nutrition or stress.
4. Area surrounding exhibit enclosure - cleanliness, housekeeping, pest control and maintenance.
5. Animals in quarantine or isolation - see items 2, 3, and 11.
6. Housekeeping - general sanitation, cleanliness and maintenance of buildings and grounds, storage of supplies and equipment, pest and rodent control, etc.
7. Unloading, loading and handling facilities for animals being purchased, sold or transported.
8. Transportation vehicles and methods used to crate, hold and transport animals.
9. Commissary - source of feed and how stored, quantity and quality offered, pest control, length of time stored, exposure to high temperatures or weather, signs of caking, mold or spoilage, type of feed versus type of animals, cleanliness and sanitation. This is an important area of concern as the quantity, quality and handling of food suffer first when expenses are cut.
10. Kitchen or food preparation area - cleanliness and sanitation, clean and wholesome food suitable to type animals kept, pest control, no hazardous chemicals stored in area. Method of thawing fish for marine mammals. Any vitamin-mineral additives. This area and the commissary will be good indications as to how well the animals are cared for.
11. Veterinary care - regular visits or full-time veterinarian, pharmacy and treatment area available, nursery area for young or newborn, quarantine area, area to isolate sick or injured animals that is quiet, darkened and has little traffic. Health care records for animals and necropsy reports for marine mammals. Contact listed attending veterinarian to ascertain that he does have an agreement with the facility and is aware of his duties and responsibilities.
12. Waste disposal - dead animals and contaminated material, feces, etc., area of disposal and method, drainage. Comply with pollution control and environmental protection laws.
13. Children's or petting zoo - sanitation, cleanliness, condition of animals, any mistreatment of animals by public or any animals dangerous to people, recognizable attendants present to supervise contact areas.

14. Areas where public is not allowed (such as breeding areas) - subject to same requirements as rest of exhibit.

15. Security - sufficient protection of the animals from vandals, predators and the public is required. This is especially important in circuses and roadside zoos. A rope or rail fence around a cage is not adequate protection. The public must also be protected from the animals. This is especially the case with children, as they may run up to cages and put their hands inside to pet the animals.

Additionally, a perimeter fence is required around the facility to restrict the escape of any animals and to prevent or discourage the entrance of roaming dogs, native wildlife, predators, vandals, and to protect the public. Subpart D, sections 3.75 (a) and 3.78 (a) and Subpart F, sections 3.125 (a) and 3.135 are the authority for this requirement. A height of 2.44 meters (8 feet) is considered minimum for a perimeter fence.

16. Water - source and quality, especially in regard to marine mammals.

17. Food - must be of sufficient quality, quantity and nutritive value to sustain the animal in good health under the conditions present (pregnant, nursing, cold, working, etc.). Must be suitable to the type animal involved, must be wholesome and noncontaminated, and must be stored and fed in a manner which does not contribute to or encourage health or parasite problems. Animal carcasses must not be fed to carnivores unless it is known that the animal was healthy and that the carcass was properly handled and refrigerated before feeding.

18. Adequate personnel - a sufficient number of experienced and trained personnel to assure that the minimum required husbandry is maintained on a daily basis. Supervisors and trainers must have the proper background in animal care.

F. Confiscation of animals - in order for animals to be confiscated and/or destroyed, they must be shown to be suffering (life or health in jeopardy) as a result of failure to comply with the Animal Welfare Act, its regulations and standards. If, upon inspection, the inspector believes that animals are suffering and should be confiscated, the procedures set forth in Veterinary Services Memorandum 595.23 "Confiscation, Disposition, and Destruction of Animals..." should be followed. Close contact shall be maintained with the Regional Director, Animal Care Staff, and the Office of the General Counsel (OGC).

G. Licensing or Registration of Exhibitors.

1. Licensing -

(a) If an exhibitor buys, sells, trades, or otherwise obtains or disposes of animals in commerce, he must be licensed (need to decide between class B dealer and class C exhibitor). Refer to definitions under section 1.1(t) and 1.1(w), 9 CFR.

(b) If an exhibitor transports animals over public roads for exhibition purposes, he must be licensed.

(c) If an exhibitor allows viewing by the general public, charges admission, or otherwise receives compensation, as determined by the Secretary, he must be licensed.

2. Registration -

If an exhibitor receives animals by donation or traps them on his own premises, does not transport them for exhibition purposes, does not dispose of the animals in commerce (except releasing back into the wild), and does not receive compensation or allow public viewing for direct or indirect compensation, then he may be registered. Examples of a registered exhibitor are: county nature centers which allow school tours, etc. In the case of stranded or beached marine mammal facilities, they may be licensed as an exhibitor, may be registered as a research facility, or may not fall under regulation, depending on the method of operation.

IV DEFINITIONS AND CLARIFICATION

- A. Animal - refer to 9 CFR 1.1(n)
- B. Wild State - refer to 9 CFR 1.1(p)
- C. Commerce - refer to 9 CFR 1.1(r)
- D. Exhibitor - refer to 9 CFR 1.1(w) (see note below)
- E. Zoo - the American College Dictionary defines a zoo or zoological garden as "a park or other large enclosure in which live animals are kept for public exhibition."

Note : If an "exhibitor" sells, buys or trades more animals than is necessary to: (1) maintain the collection, or (2) add to the collection, or (3) establish a breeding colony, then he should be licensed as a class "B" dealer rather than a class "C" exhibitor. A class "B" dealer is also allowed to exhibit animals.

V TYPE OF EXHIBITORS

A. Zoos, Roadside Zoos, Animal Parks (Fixed Exhibits)

1. A class "C" (Exhibitor) license is required for the majority of zoos (see definition in IV E). However, a small town zoo or nature center which obtains all animals by donation or trapping locally, does not dispose of or transport animals affecting commerce, and receives no direct or indirect compensation, may qualify as a registered exhibitor.

2. All items under III-GENERAL should be kept in mind and must be observed when inspecting. Special attention shall be given to the food storage and food preparation areas and to the food, as these are among the first areas affected when money is a problem. Employees are also cut in budgeting. Special attention must be given to the qualifications of personnel

assigned to care for the animals. The employees must be experienced or trained in animal care, especially the supervisors, and sufficient personnel must be assigned to adequately care for the animals every day.

3. Veterinary care must be closely examined, especially in small zoos and roadside zoos. Interview the indicated attending veterinarian to establish whether zoo officials have contacted him and implemented the required programs and care. Determine whether the veterinarian makes regular calls at the zoo or whether care is limited to emergency situations. Regular visits by the veterinarian as well as proper health, pest and euthanasia programs are required.

4. Security - This is important, especially in small zoos and roadside zoos. There should be adequate barricades or fences to keep small children and other persons away from the cages so that hands and arms cannot be stuck into the cages. Wood and pipe rail fences, etc., are not adequate protection. In some cases, recognizable attendants may be required during times of public contact. Protection against vandals and predators must be adequate. A perimeter fence is required. (See III E, 15.)

5. Problems involving endangered species should be brought to the attention of the U.S. Fish and Wildlife Service, Department of the Interior, in addition to any USDA action.

B. Marine Mammal Exhibits

1. Marine mammals were effectively brought under regulation September 20, 1979. Such facilities must be licensed as exhibitors and must comply with regulations and standards unless a variance has been granted for particular sections of the regulations. Inspectors should be aware of all variances granted in their area of responsibility and the duration of the variance. All facilities must be in compliance by September 20, 1982. Inasmuch as marine mammals have much greater environmental requirements than other regulated species, these inspections should be made by knowledgeable Veterinary Medical Officers, or Animal Health Technicians with special training or experience.

2. Special attention should be paid to the areas of food (quality, quantity and storage) and employees - especially supervisors, trainers and training methods, and water quality. If in doubt about the water quality of a facility, samples should be taken and sent to a laboratory. The results can then be compared to facility records. Areas of veterinary care, health records and necropsy reports must be carefully reviewed.

3. Almost all marine mammals are under permit, as authorized by the Marine Mammal Protection Act of 1972 (PL 92-522), from the Department of Commerce or Department of the Interior. Liaison and satisfactory working relationships must be established and maintained with local offices and personnel of the National Marine Fisheries Service and the U.S. Fish and Wildlife Service. Problems concerning marine mammals should be brought to the attention of these two agencies, in addition to any USDA action. Inspectors

should be familiar with the Interagency Agreement between APHIS, NMFS and USFWS in regard to marine mammals and should make use of the assistance and expertise of these agencies when necessary. Marine mammals regulated by each agency under the Marine Mammal Protection Act (MMPA) are listed below:

Department of the Interior, FWS
Polar Bear
Manatee
Sea Otter
Walrus

Department of Commerce, NMFS
Seals
Whales
Dolphins

4. Jurisdiction - both NMFS and USFWS have jurisdiction over the listed marine mammals through their permit systems, under the Marine Mammal Protection Act, and will handle all violations and legal actions in that regard. USDA will assume authority under the Animal Welfare Act when the animals enter captivity and will handle all violations and legal actions concerning the AWA. When animals have been captured or otherwise restrained in the wild, selections made, and the unwanted animals released back into the wild, the retained animals are then considered to be in captivity and are subject to the Animal Welfare Act and regulations. USDA will assume jurisdiction at the point the captured animals enter U.S. territorial waters in regard to practical field enforcement.

5. Isolation of animals and holding facilities. Special provisions are made for temporary holding facilities under veterinary care (3.110(f)). However, these are social animals (except for polar bears) and the inspector should question the justification for keeping any marine mammal in isolation or in a temporary holding facility over 90 days. If the facility has only one marine mammal or special circumstances exist, then isolation may be justified but should be investigated by the inspector.

C. Animal Trainers - Movie and Television Work.

1. A number of private animal compounds owned by one or more persons are located in certain areas. Most of these animals are wild or exotic, well trained, and are used for movie and television work, advertising campaigns, promotional campaigns, etc. These people may be individualistic and their work may be limited, seasonal, uncertain, and highly competitive. Therefore, inspectors must give special attention to all aspects of the regulations and standards when inspecting these facilities, as many violations may occur since "economy" is a way of life. Feeding practices, veterinary care, housing and sanitation are often problem areas. As in many endeavors, some facilities are well operated and have a good reputation, but others are poorly operated and have poor reputations. There is considerable trading and loaning of animals so that inventories and records must be carefully examined. Periodic inspections during filming, etc., are desirable if dates and location information are available.

D. Traveling Animal Shows - Circuses, Carnivals, Petting Zoos, Animal Acts.

1. These exhibitors are required to have a class C license due to their effect upon commerce and should be contacted whenever they are encountered in any area. If traveling exhibitors are found to be registered as exhibitors, steps should be taken to correct the situation and convert them to a class C license.

2. Due to the mobile nature of these exhibitors, a permanent contact or mailing address must be established on initial licensing so that they may be contacted as necessary. Most large operations go on the road around February and return off the road around November. They may or may not winter in the same place or State each year. Smaller operations often stay on the road all year and may be difficult to contact. Traveling exhibitors should be advised that their license will terminate if not renewed each year (9 CFR 2.5 and 2.7).

3. Upon initial contact, the license status of the unit must be determined and the date of the last inspection established. If the unit has not been inspected within the previous 90 days, an inspection must be made. If the unit has been inspected within the previous 90 days, then it need not be inspected unless conditions or circumstances indicate otherwise. If an inspection is made, a copy of the inspection report (VS form 18-8) must be forwarded to the area office for the State in which the exhibitor is licensed.

4. Whether an inspection was made or not, the itinerary of the exhibit should be determined and copies sent to the area offices of subsequent sites. The involved area offices should be advised whether an inspection in their State is required or not. This will prevent duplication of effort and avoid allegations of harassment by the exhibitor. If the exhibit is a circus or consists of multiple animal acts, each animal act must be contacted to determine if it is licensed and when it was last inspected.

5. When inspections are performed, particular attention must be given to those sections of the regulations which require judgmental decisions regarding the intent of the regulations, such as space requirements and handling. It is important that these be applied in a straightforward manner in order to achieve as much uniformity of inspection as possible.

6. Special attention must be given to the security measures required under sections 3.75(a), 3.78(a), 3.125(a) and 3.135 of the regulations so as to assure the safety of both the public and the animals. Children and others have been badly injured or killed due to lack of proper supervision and/or barriers between the animals and the public. Roped off cages, open feeding doors, etc., do not constitute proper security and are an open invitation for people to pet the animals. Accidents of this type can be prevented by proper security measures and proper supervision. Consideration must also be given to the health and well-being of young animals used in petting zoos, as they are subjected to considerable stress and abuse over a period of time. Proper supervision and rest are required (sections 3.135 and 3.111).

VI INFORMATION AND ASSISTANCE

A. Information and assistance may be obtained from the following:

**Animal Care Specialist
Animal Care Staff
National Marine Fisheries Service
Fish and Wildlife Service**

B. Policy-setting suggestions should be referred to the Animal Care Staff through the Regional Director so that they may be acted upon by this office.

KRILL

**K. R. Hook
Acting Deputy Administrator
Veterinary Services**

Agreement
between the
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
U. S. Department of Commerce
and the
U. S. Fish and Wildlife Service
Department of the Interior
and the
Animal and Plant Health Inspection Service
Department of Agriculture

ARTICLE I - General Information

The National Marine Fisheries Service and the U.S. Fish and Wildlife Service (the Services) share responsibility for the administration and enforcement of the Marine Mammal Protection Act of 1972, as amended, (16 U.S.C. 1361-1407), hereinafter referred to as MMPA.

Regulations promulgated under the MMPA require that marine mammals, taken or imported under permits issued by the Services for the purposes of scientific research or public display, be taken in a humane manner, and, further, that the Services specify the methods of capture, supervision, care, and transportation which must be observed pursuant to and after such taking or importation.

The Animal and Plant Health Inspection Service (APHIS) is responsible for the administration and enforcement of the Animal Welfare Act, as amended, (7 U.S.C. 2131-2156), hereinafter referred to as AWA.

The AWA requires, among other things, the promulgation of standards governing the humane handling, care, treatment, and transportation of animals in commerce.

In order to further the purposes of the MMPA and the AWA as they relate to the humane handling, care, treatment, and transportation of captive marine mammals, the Services and APHIS (the Parties) deem it necessary and desirable to enter into an agreement.

ARTICLE II - Reference and Authorities

This agreement between the Services and APHIS is entered into under the authority of 16 U.S.C. 1377(a) and 1382(c) and 7 U.S.C. 2145.

ARTICLE III - Purpose

The parties have entered into this agreement to promote the effective implementation of standards governing the humane handling, care, treatment, and transportation of captive marine mammals through a cooperative effort, and for the following specific purposes:

1. To ensure that these standards are applied uniformly to all marine mammals in captivity;
2. To provide appropriate, consistent guidance to persons responsible for these marine mammals in captivity; and
3. To ensure that all responsibilities of the agencies, relative to the humane handling, care, treatment, and transportation of captive marine mammals, are adequately met through the effective utilization of the personnel and unique capabilities of each agency, with minimum duplication of effort.

ARTICLE IV - Responsibilities of Parties

Recognizing that APHIS under the AWA has prescribed regulations establishing standards for the humane handling, care, treatment, and transportation of marine mammals in the United States (9 CFR Parts 1, 2 and 3):

1. The Services will require that any facility in the United States subject to the AWA which holds or acquires captive marine mammals under authority of the MMPA must be licensed or registered by APHIS and that any facility holding marine mammals under authority of the MMPA comply with the standards.
2. The Services will require any facility in the United States holding or acquiring captive marine mammals under authority of the MMPA to obtain an AWA variance if one is necessary to comply with the standards. For captive marine mammals obtained after the effective date of the AWA regulations, the Services will require that a variance, if required, be obtained prior to placing additional animals in the facility. - *will not be given variance for animals already held.*
3. APHIS will determine whether such facility is in compliance with the standards and whether granting of a variance to the standards is justified. *APHIS consult with Dept. of Interior & NOAA prior*
4. Representatives of APHIS are hereby authorized, under the MMPA, to inspect, investigate, and render support in any matter that

relates to non-compliance with the standards governing the humane handling, care, treatment, and transportation of captive marine mammals taken under the MMPA or regulations issued thereunder; provided, however, APHIS shall not issue civil penalty notices or refer for criminal prosecution any violations under the MMPA.

5. The Services will inform APHIS of the following events, which may, in the opinion of the appropriate Service, affect the status of captive marine mammals:

- a. application for permits;
- b. issuance of permits;
- c. permit modifications and authorizations;
- d. transfer or other disposition of captive marine mammals held under permit authority;
- e. facilities holding beached and stranded marine mammals for rehabilitation under emergency circumstances;
- f. citations for violation of the Marine Mammal Protection Act;
- g. complaints from the public regarding the manner of care and treatment of marine mammals; and
- h. other pertinent events.

6. APHIS will inform the appropriate Service of the following events, which may, in the opinion of APHIS, affect the status of captive marine mammals held as authorized under the MMPA:

- a. licensing or registration of facilities;
- b. facilities requesting variances;
- c. facilities operating under the variance provisions;
- d. orders to cease and desist from continuing violations of the standards;
- e. suspension or revocation of licenses;
- f. reports, letters, memoranda, etc., relating to non-compliance with the standards governing the humane handling, care, treatment,

and transportation of captive marine mammals permitted or required to be permitted under the MMPA; and

g. other pertinent events.

7. Subject to the limitations set forth in ARTICLE VI, any party to this agreement seizing, confiscating, and/or destroying or causing to be destroyed a captive marine mammal will inform the other parties of such action as soon as possible.

8. Agents and officials of each Service and of APHIS may, upon mutual agreement, provide appropriate assistance to each other.

ARTICLE V - Seizure, Confiscation, and/or Destruction of Marine Mammals

Subject to the limitations set forth in ARTICLE VI, any employee or agent of any of the parties who is authorized to administer or enforce the AWA or the MMPA shall be considered to possess the statutory and regulatory authority of all the parties under the AWA and the MMPA in the event such employee or agent, in the course of carrying out his/her authorized duties seizes, confiscates, destroys, or otherwise takes a marine mammal. Before a marine mammal is destroyed by an employee or agent of one of the parties, pursuant to the authority of another party, that other party shall be notified and consulted. If such employee or agent determines that such notice cannot be given and that immediate action is necessary for humane or other compelling reasons, then the failure to give such notice shall not affect the authority of the agent or employee described above.

ARTICLE VI - Seizure, Confiscation, and/or Destruction Limitations

The authority described in ARTICLE IV, paragraph 7, and ARTICLE V, to seize, confiscate, or destroy a captive marine mammal is subject to the limitations imposed by the Constitution and the applicable laws and regulations of the United States.

ARTICLE VII - Amendments

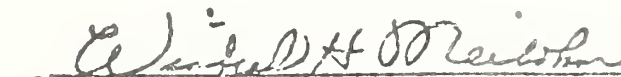
This Agreement may be amended from time to time as may be agreeable to the parties.

ARTICLE VIII - Effective Date

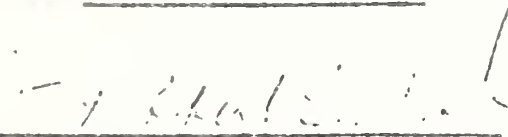
This agreement will become effective on September 20, 1979.

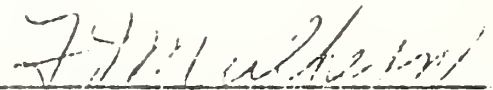
ARTICLE IX - Termination

This Agreement may be terminated by, and with respect to, any party upon 60 days advance written notice thereof to the other parties.


Assistant Administrator for Fisheries
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
Department of Commerce

Date JUL 12 1979

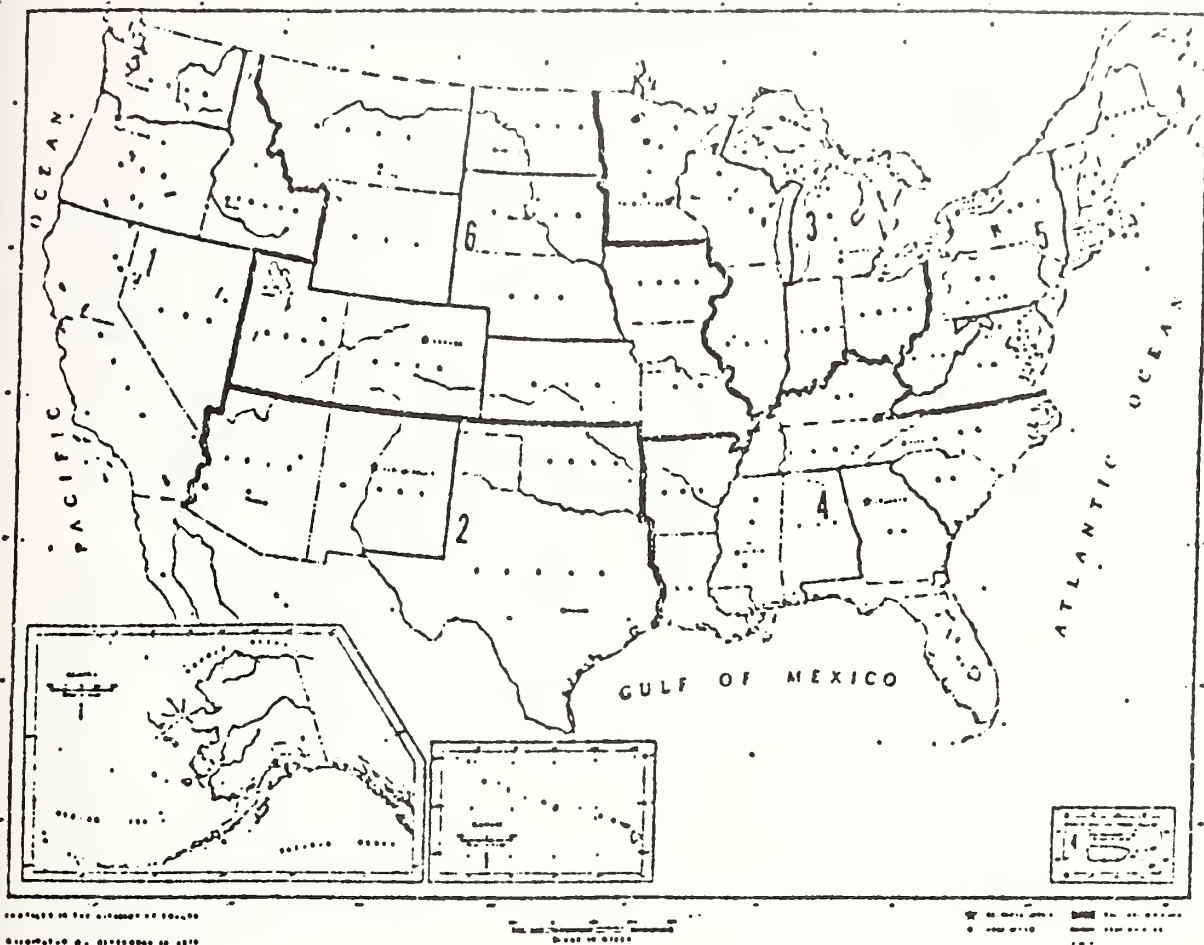

Acting Director, Fish and Wildlife Service
Department of the Interior


Administrator, Animal and Plant
Health Inspection Service
Department of Agriculture

Date AUG 10 1979

Date AUG 17 1979

REGIONAL AND AREA OFFICE BOUNDARIES



REGIONAL OFFICES

Region 1 - Suite 1692, Lloyd 500 Bldg., N.E. Multnomah St., Portland, Oregon 97208 (503-231-6118); R. Kahler, Regional Director; Edward B. Kimberlain, Assistant Regional Director; David B. Marshall, Endangered Species Specialist.

Region 2 - P.O. Box 1306, Albuquerque, New Mexico 87103 (505-756-2321); W. O. Benson, Regional Director; Robert F. Stephen, Assistant Regional Director; R. B. Woody, Endangered Species Specialist.

Region 3 - Federal Bldg., Fort Snelling, St. Paul, Minnesota 55111 (612-725-3500); Charles A. Hughlett, Acting Regional Director; Delbert H. Rasmussen, Assistant Regional Director; James M. Engel, Endangered Species Specialist.

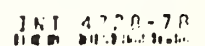
Region 4 - P.O. Box 95067, Atlanta, Georgia 30347 (404-881-4671); Kenneth E. Black, Regional Director; Harrold W. Benson, Assistant Regional Director; Alex B. Montgomery, Endangered Species Specialist.

Region 5 - Suite 700, One Gateway Center, Newton Corner, Massachusetts 02158 (617-965-5100); Howard Larsen, Regional Director; James Shaw, Assistant Regional Director; Paul Nickerson, Endangered Species Specialist.

Region 6 - P.O. Box 25426, Denver Federal Center, Denver, Colorado 80225 (303-234-2209); Harvey Willoughby, Regional Director; Charles E. Lane, Assistant Regional Director; Don Rogers, Endangered Species Specialist.

Alaska Area - 1101 E. Tudor Rd., Anchorage, Alaska 99507 (907-265-4864); Gordon W. Watson, Area Director; Dan Benfield, Endangered Species Specialist.

District Offices



REGIONAL DIRECTORS

FNE Dr. Robert W. Hanks
Acting Director, Northeast Region
National Marine Fisheries Service
14 Elm Street, Federal Bldg.
Gloucester, Massachusetts 01930
FTS: 8-837-9200
Commercial: 617-281-3600

SE William H. Stevenson
Director, Southeast Region
National Marine Fisheries Service
9450 Koger Blvd., Duval Bldg.
St. Petersburg, Florida 33702
FTS: 8-826-3141
Commercial: 813-893-3141

AK Harry L. Kietze
Director, Alaska Region
National Marine Fisheries Service
P.O. Box 1668
Juneau, Alaska 99802
FTS: 907-586-7221***

NW Donald R. Johnson
Director, Northwest Region
National Marine Fisheries Service
1700 Westlake Avenue North
Seattle, WA 98109
FTS: 8-399-7575
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SW Gerald V. Howard
Director, Southwest Region
National Marine Fisheries Service
300 South Ferry Street
Terminal Island, CA 90731
FTS: 796-2575
Commercial: 213-548-2575

CENTER DIRECTORS

MAFC Dr. Dayton L. Alverson
F11 Director, Northwest Fish. Center
2725 Montlake Blvd. E
Seattle, Washington 98112
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Commercial: 206-442-4760

SEFC Dr. William Fox
F12 Director, SE Fisheries Center
75 Virginia Beach Dr.
Miami, FL 33149
FTS: 8-350-1111
Commercial: 305-361-5761

NEFC Dr. Robert L. Edwards
F13 Director, NE Fisheries Center
Woods Hole, Massachusetts 02543
FTS: 8-640-1233
Commercial: 617-548-5123

SWFC Dr. Izadore Barrett
F14 Director, SW Fisheries Center
P.O. Box 271
La Jolla, California 92038
FTS: 8-893-6235
Commercial: 714-453-2820
Ext. 235

***For calls to Alaska, dial Seattle FTS Operator 399-0150
give FTS telephone number for Alaska Region

Marine Mammal Public Display Permit Applicants

<u>Name</u>	<u>Permit File Number</u>	<u>Address</u>	<u>Species</u>
Columbia Zoo Park	PRT 9-6-I	P.O. Box 1143 Columbia, SC 29202	Polar bears
Frank Zalocha Utica Zoological Society	PRT 9-7	Steel Hill Road Utica, NY	Polar bears
San Antonio Zoo	PRT 9-12	3903 N. St. Mary's St. San Antonio, TX 78212	Polar bear
Jackson Zoological Park	PRT 9-14	2918 W. Capitol St. Jackson, MS	Polar bears
Louisville Zoological Garden	PRT 9-15	1100 Trevillian Way Louisville, KY 40213	Polar bears
Sea World, Inc.	PRT 9-17-C	1720 South Shores Road San Diego, CA 92109	Walrus pups
Sea World, San Diego	PRT 9-24	Same as above	Sea otter
Alexander Lindsay Jr. Museum	PRT 9-26	1901 First Avenue Walnut Creek, PA 94596	Sea otters
Sea World, Inc.	PRT 2-39	Same as PRT 9-17-C	Sea otter
Aquatic Institute	PRT 2-87	P.O. Box 536 Cape Coral, FL 33904	Manatee
The Seattle Aquarium	PRT 2-90	Dept. of Parks & Recreation 100 Dexter Avenue, North Seattle, WA 98109	Sea Otter
San Antonio Zoo	PRT 2-653	Same as PRT 9-12	Polar bear
Sea World, Inc.	PRT 2-1486	Same as PRT 9-17-C	Walrus pups
Sea World, Inc.	PRT 2-3542	Same as PRT 9-17-C	Walrus pups



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Federal Bldg.
Hyattsville, MD
20782

JUN 22 1990

REAC MEMORANDUM NO. 500

Subject: Impervious Surfaces and Indoor, Outdoor Facilities, and Sheltered Facilities

To: Sector Supervisors, REAC
Animal Care Specialists, REAC

I. PURPOSE

The purpose of this memorandum is to clarify the intent and purpose of the term "impervious surfaces" as used in the animal welfare standards and to provide guidance in classifying indoor, outdoor, and sheltered housing facilities.

II. IMPERVIOUS SURFACE

A. This term is defined as a surface that does not allow the absorption of fluids; i.e., a surface that is composed of a material or treated with a material which is nonpermeable, nonporous, and is incapable of being penetrated by moisture or fluids. Fluids on such a surface will bead or run off rather than be absorbed into it.

B. Examples of materials and substances which provide an acceptable "impervious surface":

1. Steel or metal--not rusted or torn;
2. Hard, smooth plastics, formica or acrylics--if well maintained and not torn;
3. Concrete, concrete blocks, cinder blocks, or bricks--if sealed to form a smooth, nonporous, nonflaking surface, and can be maintained in such condition;
Note: Broom Finish is considered smooth, if not cracked, flaking etc.,
4. Asphalt--if sealed to form a smooth, uncracked surface so as to not collect dirt, fecal material, urine, etc., and can be maintained in such condition; and

5. Wood--if good quality, smooth, not cracked or splintered and sealed with a material such as shellac, varnish, plastic urethane, or nontoxic paints, etc. (Paints also should be either oil base, latex, acrylic, vinyl or epoxy, etc., and be waterproof, washable, and contain no lead.)

C. Examples of materials and substances which do not provide acceptable impervious surfaces:

1. Raw or unfinished wood or other porous surfaces such as coarse asphalt, concrete, etc., which do not have a smooth finish.
2. Wood painted or treated with whitewash, creosote, or linseed oil. (Boiled linseed oil may be toxic to animals and raw linseed oil will not make wood substantially impervious to moisture.)
3. Plastic sheeting - wood or plasterboard walls, etc., covered with plastic sheeting. Plastic sheeting is not considered to be a "building surface," is not "substantial," and does not comply with the structural strength requirements.

III. INDOOR HOUSING FACILITIES

A. The definition of "indoor housing facility" requires a structure or building with environmental controls housing or intended to house animals and meeting the following three requirements:

1. It must be capable of controlling the temperature within the building or structure within the limits set forth for that species of animal, of maintaining humidity levels of 30 to 70 percent and of rapidly eliminating odors from within the building;
2. It must be an enclosure created by the continuous connection of a roof, floor, and walls (a shed or barn set on top of the ground does not have a continuous connection between the foundation and floor);
3. It must have at least one door for entry and exit that can be opened and closed (any windows or openings which provide natural light must be covered with a transparent material such as glass or hard plastic).

B. Interior Surfaces

Under general requirements the surfaces of indoor housing facilities for dogs, cats, and primates must be able to be readily cleaned and sanitized or be able to be removed or replaced. If such surfaces are not impervious to moisture, they must be removed or replaced when necessary.

For dogs and cats, the floors, walls, and any surfaces in contact with the animals must be impervious to moisture. Ceilings may be impervious to moisture or replaceable (suspended ceiling) if not in contact with the animals.

For nonhuman primates, surfaces in contact with the animals must be able to be readily cleaned and sanitized or replaced when worn or soiled.

For guinea pigs, hamsters, and rabbits, the interior surfaces must be readily sanitized.

C. Worm Bins (rabbits only)

In climates or under conditions where worms remain active throughout the year, worm bins may be used directly under the primary enclosures containing rabbits in indoor facilities. The worm bins must be properly constructed and maintained so as to control odors, moisture, vermin, flies, rodents, and other pest problems. Other floor areas (walkways between cages, service areas, etc.) and walls must comply with indoor requirements and be substantially impervious to moisture and readily sanitized.

IV. SHELTERED HOUSING FACILITIES

A. Provides shelter, protection from elements, and protection from temperature extremes at all times.

B. For dogs and cats, the following surfaces must be impervious to moisture in sheltered facilities:

1. Indoor floor areas in contact with the animals.

2. Outdoor floor areas in contact with the animals if not exposed to the sun or made of hard material such as wire, wood, metal, or concrete.

3. All surfaces in contact with the animals, including boxes, dens, or dog houses.

Outside floors if exposed to the direct sunlight for a least one-hour in the day, may consist of compacted earth, grass, or gravel.

V. OUTDOOR HOUSING FACILITIES

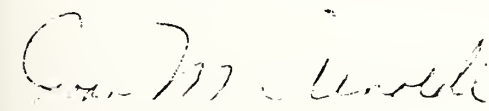
Does not meet any other definition of housing facility, and in which temperature cannot be controlled within set limits.

Building surfaces in contact with the animals must be impervious to moisture. This includes dens or houses. Floors, however, may be of grass, compacted earth, or gravel. If a surface cannot be readily cleaned and sanitized, then it must be removed or replaced when worn or soiled.

VI. PRIMARY ENCLOSURES

For dogs, cats, and nonhuman primates, the surfaces of primary enclosures must be able to be readily cleaned and sanitized or be replaced.

For guinea pigs and hamsters, the primary enclosures are to be constructed of a smooth material that is substantially impervious to liquids and moisture.



Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care



United States
Department of
Agriculture

Animal and
Plant Health
Inspection Service

Subject: License Fees for Dealers with
Multiple Type Operations

To: See Distribution

Date: MAR 14 1990

When a licensee operates more than one type of business, the following guidelines should be applied when determining license fees.

An A dealer becomes a B dealer but retains his breeder colony. When determining the license fee, the dealer should combine the amount of sales from the breeder colony and the difference between the purchase price and the selling price of the animals in his other operation.

In the case of a B dealer (breeder) operating an auction, the total amount of commissions and the total amount derived from the sale of offspring from the breeder colony should be combined.

Example:

Total amount derived from sale of animals raised =	\$50,000
Difference in purchase and selling price of animals sold =	\$25,000
Total amount of commissions derived from operating an auction =	\$10,000
Total figure to be used in figuring license fee =	\$85,000

An A dealer becomes a B dealer when he negotiates the sale of a dog or cat, or starts to purchase animals for resale.

An exhibitor who also operates another enterprise should count all animals owned or leased (including animals sold) within the year and base his fee on that number of animals. This is assuming that most of his income is derived from the exhibition of animals.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

Distribution:

All Field Employees REAC

Research Facilities/
Registration

APR 7 1992

Sector Supervisors, AC

At the recent Management Team meeting in Greenbelt, Maryland, there was discussion concerning the coordination and uniformity of designating animal sites at research facilities. It was generally felt that research facility sites should be designated at the Department level with further breakdown from there for special circumstances.

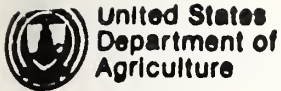
We have discussed this issue and its potential effect on our reporting system, data collection, and Annual Report to Congress. Due to the potential for causing significant discrepancies in our reporting requirement and statistics, we have determined that the designation of animal sites at research facilities are to remain as they presently are and have been in the past. No changes are to be made in the present animal site designations at research facilities.

Morley H. Cook

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

cc:

Morley H. Cook
Thomas K. Shehan



Animal and
Plant Health
Inspection
Service

Subject: Identification of Dogs and Cats at Research Facilities

Date: APR 6 1992

To: REAC Management Team
Animal Care Specialists

Recently, there have been questions about identifying dogs and cats at research facilities. In the past, many research facilities used cage cards or affixed tags to the front of the cages to identify the individual animals. Often times the cards were lost, mixed up, or became illegible, and tags were lost or mixed up when animals were moved.

To correct this problem with the identification of dogs and cats in research facilities, new regulations were promulgated which became effective October 30, 1989. Section 2.38(g) sets forth the requirements for the identification of dogs and cats in research facilities. Section 2.38(g)(1) states that dogs and cats shall be identified in the following ways:

"(i) By the official tag or tattoo which was affixed to the animal at the time it was acquired by the research facility, as required by this section, or

(ii) By a tag, tattoo, or collar, applied to the live dog or cat by the research facility and which individually identifies the dog or cat by number."

These are the only allowed methods of identification of dogs and cats at research facilities. Section 2.50 is not appropriate as it applies only to dealers and exhibitors. The use of cage cards or tags on the cage is not in compliance with the regulations. Due to public concern over the use of stolen pets in research, it is essential that dogs and cats be positively identified at all times and that proper records be maintained.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care





United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject: Post Operative Care of Animals Used In Laser Surgery Demonstrations


To: Sector Supervisors, AC
Animal Care Specialists

Date: 21 FEB 1992

Any animal used in laser major-surgery demonstrations or other similar types of uses, must be afforded proper post-operative care as determined by the Attending Veterinarian.

Before such surgery takes place, there must be a study protocol addressing post-operative care. This protocol should be written by the Principal Investigator, reviewed by the IACUC, and included in the Attending Veterinarian's program. An animal should not be returned to a farm before it fully recovers from anesthesia unless justified by the protocol. As long as the animal is under post-operative care, the ownership of the animal is not to change. If the animal is returned to the farm for post-operative care, then the farm should be a "site" of the research facility.

If there are any questions, please call the Animal Care Staff.


Richard L. Crawford
Director
Animal Care Staff
Regulatory Enforcement
and Animal Care





United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject: Instruction for Handling APHIS FORM 7023
Annual Report of Research Facility

Date: JAN 21 1992

To: Sector Supervisors, AC

The following guidelines designate the proper routing of completed Form 7023, Annual Report of Research Facility, for the Veterans Administration Facilities; other Federal facilities; and non-Federal facilities.

Veterans Administration Facilities

- The Animal Care Staff will forward copies of Form 7023 to the Biomedical Engineering Computer Center (BECC) in Sepulveda, California by August 1 of each year. The BECC will then forward copies to the appropriate VA facilities.
- The VA facility will forward the completed Form 7023 to the Biomedical Engineering Computer Center (BECC) in Sepulveda, California. These reports are not to be returned to the Sector office at this time.
- The Computer Center (BECC) shall then send all Forms 7023 to the Animal Care Staff in Hyattsville, Maryland.
- The Animal Care Staff will then forward a copy of the completed Form 7023 to the appropriate Sector office.

2. Other Federal Facilities

- The Sector office shall provide the Form 7023 to each Federal research facility in its sector.

The Federal facility will submit the completed Form 7023 to the Animal Care Staff in Hyattsville, Maryland.

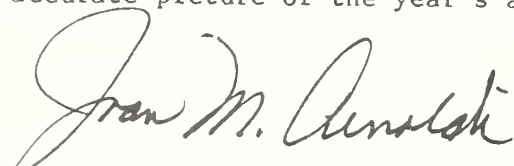
- The Animal Care Staff will then forward a copy of the completed Form 7023 to the appropriate Sector office.

Non-Federal Facilities

- The Sector office shall provide Form 7023 to each registered research facility in its sector.
- The registered research facility shall return the completed Form 7023 to the Sector office.
- The Sector office will then forward a copy of the completed Form 7023 to the Animal Care Staff, Hyattsville, Maryland.



The 7023 forms should be sent to research facilities at the start of the new fiscal year (October) so they may have time to complete and return the report by December 1 each year. All Annual Report Forms 7023 received by the Sector offices should be sent to the Animal Care Staff at least weekly and no later than December 31. Established deadlines require that Staff develop, draft, and clear the Annual Report to Congress no later than March 12 so the report can be submitted to Congress on time. Reports received after January 1 will not be included in the report to Congress and will thus not provide an accurate picture of the year's activity or animals used.

A handwritten signature in cursive script, reading "Joan M. Arnoldi". The signature is written in dark ink and is positioned above the typed name and title.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

Veterans Administration Federal Research
Facilities Reporting

Program Clerks
Sector Offices

The following address is where all Veterans Administration Federal Research
Facilities (Form 18-23's) should report:

Veterans Administration Biomedical
Engineering Computer Center (BECC)
16111 Plummer Street
Sepulveda, CA 91343

Karen A. Skipwith



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject:

Major Operative Experiments Under AWA

Date: JAN 13 1992

To: Reac Management Team

This is to clarify the REAC policy memorandum of June 5, 1990, in carrying out the intent of the Animal Welfare Act (AWA) regarding multiple surgeries performed on regulated animals.

Section 13(a)(3)(D) and (E) of the AWA stipulates that no animal is to be used in more than one major operative experiment from which it is allowed to recover. The exceptions to this are:

1) scientific necessity; 2) other special circumstances as determined by the Secretary. Any exceptions to the standards may be made only when specified by research protocol and that any exception shall be detailed and explained in a report that must be filed with the Institutional Animal Care and Use Committee (IACUC). The regulations (Section 2.31(d)(1)(x)(A), (B), and (C) support the 1985 amendment to the AWA in their explanation of the requirements by stating that under special circumstances determinations can be made on an individual basis by the Administrator.

Research protocols requiring multiple major operative procedures, such as multiple caesarean sections, should provide reasons and justification and have the approval of the IACUC. An animal that has received a major operative procedure in a protocol and has made a recovery must not be used for another major survival surgery. An animal that has had an emergency major operative procedure in receiving proper veterinary care may also be utilized in another major surgery. In order to comply with the intent of Congress and the AWA, a major operative procedure must not be performed a second time on an animal in a separate protocol and the responsible investigator must identify the animal that has had a major operative procedure to prevent their use in another major survival surgery.

The regulations offer an opportunity for requesting an exemption to the regulatory requirement of animals being limited to no more than one major operative procedure in Section 2.31(d)(1)(x)(c). The Institutional Official will be required to make such a request. He/she will need to include the following information in making a formal request to the Administrator:

1. An outline of the research proposals for which the procedure is required.
2. The species and the approximate number of animals involved in making such an exemption.



3. The timeframe for the proposed exempted procedure.
4. Address the survival time following the procedure.
5. Measures to be taken to ensure pain and distress are minimized.
6. A complete justification for the exemption. Cost saving alone will not be satisfactory.
7. An assurance that all other stipulated requirements of the AWA and regulations are adhered to in consideration of this exemption.
8. The request must be consistent with other Federal agency requirements such as the Public Health Service or recognized independent accrediting agencies.

APHIS may respond to the formal request by approving the request as written, granting a portion of the request, imposing additional limitations, or denying the request. An annual evaluation of an exemption is required which consists of an assessment of the animals and the effectiveness and soundness of the methods and procedures by the IACUC. This information is to be included in the report of the IACUC functions, Section 2.31(c). Consideration for the renewal or continuation of the exemption will be based on the IACUC's recommendation following their review of the merits of the exemption. Any exemptions must be included in the Annual Report, APHIS Form 7023, a requirement of the regulations (Section 2.36).

Emphasis is made that all requests for exemptions must contain the information set forth in the above paragraphs. The requests must be directed to the Assistant Deputy Administrator for Animal Care for his review and recommendation to the Deputy Administrator.



Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and
Animal Care



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

1 of 2

Room 828, Federal Building
Hyattsville, Maryland 20782

Subject: Federal Expenditures for
Endangered and Threatened Species

Date: NOV 8 1991

To: See DISTRIBUTION

The Fish and Wildlife Service (FWS) is requesting information from all Federal and State agencies regarding their expenditures for the conservation of endangered and threatened species for 1991. The information submitted this year will be used by the FWS to compile their third annual report to Congress on all reasonably identifiable expenditures.

Enclosed is guidance on the type of information FWS is requesting and a copy of the Animal and Plant Health Inspection Service submission for 1990. The guidance is the same as provided last year by the FWS.

In order to allow time for collating the information provided by each program, please submit your data to Environmental Analysis and Documentation by November 22, 1991. If you have any questions concerning this matter, please contact Nancy Sweeney of my staff at (301) 436-8565.

Carl Bausch
Deputy Director
Environmental Analysis
and Documentation
Biotechnology, Biologics, and
Environmental Protection

Enclosures

DISTRIBUTION:

Bobby Acord, ADC, Washington, DC
Joan Arnoldi, REAC, Hyattsville, MD
B.Glen Lee, PPQ, Washington, DC
Lonnie King, VS, Washington, DC
Al Strating, S&T, Washington, DC



GUIDANCE FOR REPORTING EXPENDITURES FOR THE
CONSERVATION OF ENDANGERED AND THREATENED SPECIES

- In passing the amendment to the Endangered Species Act (ESA), Congress indicated that the requirement was aimed primarily at expenses associated with the development and implementation of recovery for listed species. Thus, the main focus of the report should be funding of projects that support the conservation of endangered or threatened species.
- Only reasonably identifiable expenditures for listed species will be totalled in this report. Extraordinary accounting procedures to track monies expended on individual listed species are not expected. Amounts need be reported only to the nearest \$1,000, except for smaller sums.
- Expenditures associated with consultations pursuant to Section 7 of the ESA are covered only to the extent that they are readily identifiable to a particular species. Thus, a formal consultation dealing with a single species, or up to several species where the relative costs are easily divisible, would be subject to reporting.
- Salary and benefits of an employee working full-time on a single species or whose time devoted to a particular species can be readily identified would be subject to reporting.
- Examples of reportable expenditures that are directed to individual species include status surveys, habitat management, research, land acquisition, propagation (including surrogate species), and recovery plan development or implementation.
- Expenditures in a single project devoted to a number of listed species should either be prorated by the agency or not reported. General surveys or projected that cover a large number of species, some of which may not be listed, are not reportable.
- Only species on the list of Endangered and Threatened Wildlife and Plants (50 CFR Part 17) as of the last day of the Fiscal Year are to be reported. Expenditures made prior to the actual date of listing of a species, but still within the same Fiscal Year, may be reported (e.g., costs of public meetings, notices, late surveys, preliminary recovery efforts). Expenditures for unlisted, separate populations of listed vertebrates cannot be allowed into the report (e.g., southeastern brown pelicans, Atlantic and Gulf coast least terns, Alaska bald eagles, or gray wolves). Amounts for foreign species on the list would be reportable (e.g., grants or contracts carried out in another country).

Mr. Richard N. Smith
Deputy Director
Fish and Wildlife Service
18th & C Streets, NW.
Washington, DC 20240

NOV 14 1990

Dear Mr. Smith:

The Animal and Plant Health Inspection Service has reviewed its activities for Fiscal Year 1990 and has enclosed the identified expenditures for the conservation of specific endangered or threatened species.

We appreciate the guidance you provided on the scope of activities that are to be reported. The expenditures for consultations and other activities on specific species have been reported. Those consultations on large projects and/or numerous species are not reported, as they cannot be broken down by species.

We hope this information will be useful for your annual report to Congress. If you have any questions concerning this matter, please call Nancy Sweeney, Environmental Documentation, Area Code (301) 436-8565.

Sincerely,

/s/ Terry L. Medley

Terry L. Medley, J.D.
Director
Biotechnology, Biologics, and
Environmental Protection

Enclosure

ANIMAL DAMAGE CONTROL

<u>SPECIES</u>	<u>COST</u>
Alligator	\$ 800.00
Bat, Gray	\$ 201.00
Bat, Indiana	\$ 201.00
Bear, Grizzly	\$ 19,791.00
Caribou, Woodland	\$ 40.00
Coot, Hawaiian	\$ 6,000.00
Deer, Columbian White-tailed	\$ 20.00
Duck, Hawaiian	\$ 11,000.00
Eagle, Bald	\$ 7,883.00
Falcon, Peregrine	\$ 4,899.00
Ferret, Black-footed	\$ 1,551.00
Goose, Aleutian Canada	\$ 8,710.00
Fox, San Joaquin Kit	\$ 50,000.00
Moorhen, Hawaiian Common	\$ 6,000.00
Nene	\$ 7,000.00
Ocelot	\$ 54,900.00
Parrot, Bahamian	\$ 500.00
San Clemente Species:	
San Clemente Sage Sparrow	
San Clemente Island Broom Plant	
San Clemente Island Loggerhead Shrike	
Island Night Lizard	
San Clemente Island Bush-Mallow Plant	
San Clemente Larkspur Plant	
San Clemente Indian Paintbrush Plant	\$ 43,874.00
Sandalwood, Lanai	\$ 17,148.00
Shearwater, Newells	\$ 4,000.00
Stilt, Black-necked	\$ 6,000.00
Stork, Wood	\$ 200.00
Tern, Least	\$ 133,514.00
Tern, Roseate	\$ 7,000.00
Turtle, Green Sea	\$ 300.00
Turtle, Hawksbill Sea	\$ 7,500.00
Turtle, Loggerhead Sea	\$ 7,500.00
Vireo, Black-capped	\$ 22,500.00
Wolf, Gray	\$ 11,247.00
Wolf, Red	\$ 300.00

Total: \$ 440,579.00

PLANT PROTECTION AND QUARANTINE

Chilean false larch	\$	1,000
Pitcher plant (<u>Sarracenia</u> spp.)	\$	1,000
Total:	\$	<u>2,000</u>

SCIENCE AND TECHNOLOGY

California least tern	\$	2,000	(appropriated)
	\$	64,000	(reimbursable, Dept. of Defense)
Hawaiian goose (Nene)			
Hawaiian duck	\$	2,000	(appropriated)
Aleutian Canada goose	\$	4,000	(appropriated)
Bahaman parrot	\$	1,000	(reimbursable, Dept. of State)
Total:	\$	<u>73,000</u>	

TOTAL: \$ 515,579



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject: The use of Bare Metal Wire as compared to Coated Wire
Material used as Flooring in Primary Enclosures.

Date: 31 OCT 1991

To: REAC Management Team

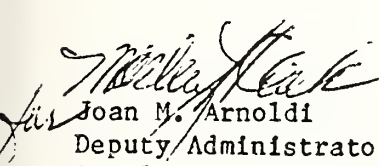
This is to clarify the policy on the need to provide solid resting surfaces when the primary enclosure floors are constructed of bare metal wire.

Wire for this purpose is defined as "open patterned, bare metal wire." This includes commonly used fencing material. When using this type of wire flooring in an animal enclosure, a solid resting platform or surface must be available to the animal contained within the enclosure. In addition, the floor must allow the animal to walk, stand, lie, and sit in a normal comfortable position.

The definition of wire does not include the commonly used wire material that is coated with vinyl or plastic. Section 3.6 requires floors to be constructed in such a manner as to protect the animal's feet from injury. Most coated wire meets this requirement when the enclosure is properly constructed, and the floor is strong and durable enough to prevent bending and sagging. The vinyl coating must be kept in good repair, no tears or rough edges. Floor surfaces that have become damaged enough to cause potential injury must be repaired or replaced. Coated wire floors that are strong and durable enough to prevent sagging and bending will not need an additional solid resting surface.

Any type flooring that allows an animal's feet to slip through the openings, does not protect the animal from injury nor does it allow the animal to sit, stand, walk or lie in a normal comfortable position. Flooring that allows an animal's feet to pass through the floor is prohibited from use by licensed or registered entities under section 3.6(2)(x) of the standards.

Should you have any questions, please contact the Animal Care Staff.


Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care





Subject: Classification of the Owl Monkey
as a Group 2 Species

Date: JUL 31 1991

To: REAC Management Team

Attached is a copy of a letter from Dr. Nelson Garnett, OPRR, NIH, indicating that the Owl monkey is to be considered a Group 2 species of primate regardless of its weight, and the Cynomolgus monkey is a Group 3 species. This decision was reached after considerable consultation and discussion, and it is to be followed when enforcing nonhuman primate housing standards. Please see that your inspectors receive this information for guidance.

JM Arnoldi
Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

Enclosure





National Institutes of Health
Bethesda, Maryland 20892
Building: 31
Room: 5B59
(301) 496-7163

July 18, 1991

CONFIDENTIAL

Dear :

This is in response to your June 12 letter to Dr. John Miller concerning nonhuman primate cage sizes at the Eye Research Institute (ERI).

The National Research Council's Guide for the Care and Use of Laboratory Animals (Guide) describes the minimum recommended cage sizes for various groups of nonhuman primates. The Guide classification is based on species groupings according to typical adult weight range, skeletal size, and the behavioral needs of the species. The Office for Protection from Research Risks (OPRR) has determined, in consultation with other professionals, regulatory agencies, and accrediting bodies, that the owl monkey is a Group 2 species. The 21 inch cage height and 2.25 sq. ft. floor area described in your letter are clearly inadequate for this species, especially considering their reclusive nature (need for a nest box in cage), long tail, and arboreal habits (need for elevated perches). These cage sizes will also fail to meet the new requirements of the U. S. Department of Agriculture (USDA) Animal Welfare Act regulations.

The cynomolgus monkey is a Group 3 species and also requires more cage space than what is reportedly being provided at your institution.

Inadequate cage sizes for nonhuman primates represent a serious and continuing noncompliance with the Public Health Service Policy on Humane Care and Use of Laboratory Animals (PHS Policy).

Please provide this Office with a specific plan and schedule for correcting this major deficiency. Please also include a copy of the ERI plan for environmental enhancement adequate to promote the psychological well-being of nonhuman primates at your institution as required by USDA.


Page 2

The ERI Animal Welfare Assurance will remain in a Conditionally Approved status until this matter is resolved.

A response by August 16 is required.

Please call if I may be of assistance.

Sincerely,


Nelson L. Garnett, D.V.M.
Chief, Compliance Branch
Division of Animal Welfare, OPRR

NLG/mp

October 28, 1991

M. Ward Crowe, D.V.M.
University Veterinarian
University of Kentucky
412 Kinkead Hall
Lexington, KY 40506-0057

Dear Dr. Crowe:

This is in response to your letter of October 15, 1991, that relates to the question of whether a quorum of the committee needs to be present for the semi-annual inspections of a research facility coming under the Animal Welfare Act (AWA).

Although Section 13 (b) (2) of the AWA states that "A quorum shall be required for all formal actions of the Committee, including inspections under paragraph (3).", the regulations were addressed to allow more flexibility to conduct the inspections and still meet the intent of the Act. The regulations under Section 2.31 (c) (3) state in part: "The IACUC may use subcommittees composed of at least two Committee members and may invite ad hoc consultants to assist in conducting the evaluations, however, the IACUC remains responsible for the evaluations and reports as required by the Act and regulations." Therefore, by regulation, the University is allowed to perform semi-annual inspections with less than a quorum of the committee.

In response to your question concerning the names of inspectors being furnished on the semi-annual report, not every specific requirement is spelled out in a regulation in order to allow some degree of elasticity in meeting compliance. With a degree of flexibility, it also permits the regulator to make adjustments without resorting to rulemaking for each minor problem area. Under Section 13 (b)(4)(A)(iv) the Act states ". . .include any other information pertinent to the activities of the Committee." The latter reference and other Sections of the AWA and regulations aid in implementing the intent of Congress.

If you find need for further clarification, please let me know. It was nice to see you at the NAER meeting. Perhaps we will see you at another conference in the near future.

Sincerely,

Morley H. Cook

Morley H. Cook
Associate Deputy Administrator
Regulatory Enforcement and
Animal Care

cc:
✓ J. Arnoldi, REAC, Hyattsville, MD
R. Crawford, REAC-AC, Hyattsville, MD
J. Walker, SS/AC, Tampa, FL

IC:MHCook:lfid:x4980:10/25/91:Linda>memo>crowe.
APHJ



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject: Clarification of Terminal Surgery as a
Painful/Nonpainful Procedure

To: REAC Management Team

Date: 7 NOV 1991

Some confusion has become apparent over a letter sent out December 21, 1989, dealing with terminal surgery procedures. The letter indicated that animals used in terminal surgery procedures do not experience pain. This statement has apparently been misinterpreted to mean that terminal surgery with anesthesia is not a painful procedure and, therefore, does not require a search for alternative procedures by the investigator.

This memorandum is to clarify the status of terminal surgeries under the Animal Welfare Act (AWA). It is the Department's position that terminal surgery is a potentially painful procedure with the pain alleviated by anesthesia (depending on the plane of anesthesia), and that it is to be considered a painful procedure which is alleviated by drugs. As a painful procedure, it requires that the investigator consider alternatives to the procedure and that the IACUC review and approve the procedure. If you have any research facilities that consider terminal surgeries to be nonpainful procedures, they should be advised of this decision.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and Animal Care





United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

1 of 4

Subject: Standardized Form Letters for Annual
Report of Research Facility (APHIS FORM 7023)

Date: AUG 16 1991

To: Sector Supervisors
Animal Care

Enclosed are copies of three form letters for use in sending out APHIS FORM 7023. One is for registered research facilities; one is for VA animal facilities; and one is for other Federal animal facilities. Instructions as to how these facilities are to submit the completed 7023 should be added to the letter as indicated in the memorandum "Instructions for APHIS FORM 7023 Annual Report of Research Facility," dated July 31, 1991, (copy enclosed).

All Sectors should use standardized, uniform letters of instruction for the 7023 so as to reduce confusion and misinterpretation by research facilities in the different Sectors. The use of such letters should greatly reduce the questions and complaints received by staff and Sector offices.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

Enclosures



Sample Standard Letter for APHIS FORM 7023
for Registered Research Facilities

Dear Registrant:

Animal Welfare regulations require that all Registered Research Facilities, whether active or inactive, file an "Annual Report of Research Facility" (APHIS FORM 7023) by December 1 of each year. The Annual Report is to be completed in triplicate and two copies of the completed report returned to the address indicated above. Reporting facilities whose registration was canceled during the reporting period are still required to submit an Annual Report. The reporting period is for the Federal fiscal year, October 1, 1990, through September 30, 1991. The report must be received by the above Sector office no later than December 1, 1991, so that we may meet the deadline for the Animal Welfare Annual Report to Congress. Failure to submit a completed annual report is a violation of the Animal Welfare Act (AWA) and the regulations (9 CFR Section 2.36) and could subject your facility to prosecution under the AWA.

Instructions for completing the Annual Report of Research Facility are printed on the back of the form. All research facilities should complete items 1 through 3; items 4 through 13 should be completed where applicable. The signature, title, and date of the Chief Executive Officer (CEO) or legally responsible Institutional Official (IO) for the research facility is required to certify to the assurance statements and the accuracy of the report.

Sincerely,

Sample Standard Letter for APHIS FORM 7023
for Veterans Administration Facilities

Dear:

The Animal Welfare Act (AWA) requires that any department, agency, or instrumentality of the United States having laboratory animal facilities shall comply with the standards and other requirements of the AWA. The AWA and regulations require that Federal research facilities file an "Annual Report of Research Facility" (APHIS FORM 7023) by December 1 of each year. The reporting period is for the Federal fiscal year, October through September. For Veteran Administration facilities, the completed Annual Report should be sent to the VA Biomedical Engineering Computer Center (BECC), Sepulveda, California. The BECC will then forward all reports to the Animal Care Staff, USDA, APHIS, REAC, Hyattsville, Maryland, prior to the December 1 deadline.

Instructions for completing the Annual Report of Research Facility are printed on the back of the form. The form should be completed in triplicate. All facilities should complete items 1 through 3; items 4 through 13 should be completed where applicable. The signature, title, and date of the Chief Executive Officer (CEO) or legally responsible Institutional Official (IO) for the research facility is required to certify the assurance statements and the accuracy of the report.

Sincerely,

cc:

Dr. Donald D. Holmes, VA, Washington, DC

Sample Standard Letter for APHIS FORM 7023
for Federal Facilities Other Than the
Veterans Administration

Dear:

The Animal Welfare Act (AWA) requires that any department, agency, or instrumentality of the United States having laboratory animal facilities shall comply with the standards and other requirements of the AWA. The AWA and regulations require that Federal research facilities file an "Annual Report of Research Facility" (APHIS FORM 7023) by December 1 of each year. The reporting period is for the Federal fiscal year, October through September. Federal research facilities should complete the Annual Report in triplicate and send two completed copies to:

USDA, APHIS, REAC
Animal Care Staff
6505 Belcrest Road
Federal Building, Room 565
Hyattsville, MD 20782

Instructions for completing the Annual Report of Research Facility are printed on the back of the form. All facilities should complete items 1 through 3; items 4 through 13 should be completed where applicable. The signature, title, and date of the Chief Executive Officer (CEO) or legally responsible Institutional Official (IO) for the research facility is required to certify the assurance statements and the accuracy of the report.

Sincerely,



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject: REAC Inspections
Barrier Facilities

Date: JUL 5 1991

To: See DISTRIBUTION

Replaces VS Memorandum: Animal Welfare Inspections of Specific Pathogen Free (SPF) Animal Colonies of 6-6-86

Section 16(a) of the Animal Welfare Act (AWA), as amended, which authorizes the Secretary to make such investigations and inspections, as deemed necessary, applies to all facilities, animals, and records subject to the Act which includes those animals maintained in barrier facilities and SPF colonies.

REAC appreciates the critical nature of maintaining a barrier facility, the value of the science and products produced by these facilities, and the need for a cooperative effort to safeguard barrier containment and maintain necessary security while assuring compliance with the AWA.

Inspections by REAC VMO's of bonafide barrier facilities may be performed by analysis of environmental records, visual inspection through an adequate viewing window, random selection of animals to be visually inspected. Various non-entry methods, e.g., video viewing from outside the barrier room, may substitute for an inadequate viewing window. If the REAC VMO inspector determines that it is necessary to enter the barrier room to adequately complete an inspection or to resolve a suspected problem, the VMO may, by following entry procedures prescribed by the facility, enter and complete the inspection. However, the institutional official, based on the size, value, and/or critical nature of the barrier, may request that the entry and internal inspection be performed by an Animal Care Specialist (ACS).

REAC, ACS, will receive advanced education in barrier facility maintenance.

APHIS, REAC, maintains the right to enter all animal facilities containing species covered by the Act. Entry into barrier facilities should rarely be necessary if the institution provides adequate records and viewing facilities. Security and safety requirements as stipulated by the facility for their personnel who enter the colony will be strictly adhered to by REAC personnel.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and
Animal Care



DISTRIBUTION:

J. Glosser, OA

REAC Management Team

REAC VMO's

REAC ACS



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service


Subject: Dr. Debra Beasley
Animal Care Specialist, REAC

To: Availability of Animal Study Proposals
at Registered Research Facilities

Date: NOV 9 1990

Having read the letter from Rutgers Univ., I agree that their recordkeeping system is in compliance with the regulations. Section 2.35(f) states that, "All records shall be available for inspection and copying by authorized APHIS or funding Federal agency representatives at reasonable times." I consider the maintenance of such records in a central location to meet this requirement. If during an inspection of animals at a distant registered research site the inspector deems it necessary to also inspect the IACUC approved animal study protocol for those animals, the following guidelines are recommended:

1. Ask the attending veterinarian or facility manager if he/she has information or can access information regarding the protocol via telephone or fax. This person may be familiar with the protocol and subsequently may be able to answer the inspector's questions.
2. If adequate information cannot be obtained in this manner, it is recommended that the inspector make some notes about the problem with the animal(s), the protocol number, pertinent animal information, and any other information that it is felt necessary to compare with the IACUC approved protocol.
3. An inspection of the protocol in question should subsequently be made by the inspector. If the inspector has serious concerns, he/she may wish to inspect the protocols that same day or the following day. Alternatively, if the inspector deems it appropriate, the notes may be retained and a repeat inspection at a later date may be planned that incorporates both the research site and the protocols.

for 
Timothy D. Mandrell, DVM

Senior Staff Veterinarian
Animal Care Staff
Regulatory Enforcement and Animal Care





United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

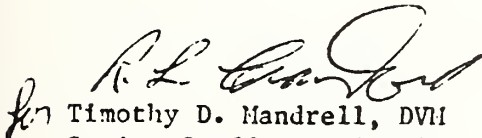
Subject: Valencia D. Colleton, SS/AC
Annapolis, MD

Date: **NOV 9 1990**

To: Ocular Irritancy Testing and Skin Irritancy Testing

As per previous memos from you and Dr. Binkley, the following are guidelines and recommendations for evaluating approved animal study proposals, IACUC records, and annual reports, as well as for observing animals on studies involving ocular irritancy testing and skin irritancy testing:

1. The actual testing procedure for conducting ocular irritancy (Draize) and skin irritancy tests is generally not painful. These tests involve the administration of chemicals, drugs, etc. to the conjunctival sac or dermal application of such substances. It is the reaction produced by the chemical or product being tested that causes pain rather than the administration procedure itself.
2. Negative reactions for such tests (absence of any reaction or lesions) should be considered non-painful.
3. Positive results for such tests (reddening, swelling edema, irritation, or disruption of the epithelium for skin irritancy test and chemosis, conjunctivitis, corneal edema, photophobia, neovascularization or disruption of the epithelium for eye irritancy tests) are generally considered to cause discomfort or pain depending on the severity of the reaction produced.
4. Animals that produce positive results that are painful should be reported in column D of the Annual Report (form 18.23) if the pain is alleviated with anesthetics or analgesics; these animals should be reported in column E if the anesthetics and analgesics are withheld. A written explanation must be provided for those animals listed in column E. Animals that have negative reactions and do not experience pain should be reported in column C.
5. All animal protocols involving ocular irritancy, skin irritancy, or other similar tests that cause pain or may be expected to cause pain must comply with all of the provisions of 9 CFR Sec. 2.31. In reviewing these protocols, it is important to check for compliance with Sec. 2.31(d)(1)(ii), (iv), and (vi).


Timothy D. Mandrell, DVM

Senior Staff Veterinarian
Animal Care Staff
Regulatory Enforcement and Animal Care



APHIS—Protecting American Agriculture



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Subject: Determination of Need for Licensing or Registration
for Antibody Production/Serum Collection

Date: AUG 28 1990

To: REAC Personnel

A number of questions have been raised over the past several months concerning the proper method of handling antibody producers and serum collectors under the Act. The Animal Care Policy Committee has deliberated on this issue and has reviewed the regulations and standards in this regard.

In 9 CFR, Part 1, the definition of "Research Facility means any school... institution, organization, or person that uses or intends to use live animals in research, tests, or experiments, and that (1) purchases or transports live animals in commerce, or (2) receives funds under a grant, award, loan, or contract..."

The definition of "Dealer means any person who, in commerce, for compensation or profit, delivers for transportation, or transports,...buys, or sells, or negotiates the purchase or sale of: Any dog or other animal whether alive or dead (including unborn animals, organs, limbs, blood, serum, or other parts) for research, teaching, testing, experimentation,..."

The definition of "Commerce means trade, traffic, transportation, or other commerce:

(1)

(2) Which affects the commerce described in this part."

In view of the above, the following findings have been made:

(1) Facilities which produce antibodies or antisera inject animals with antigens to obtain a desired immune response from the animal. This immune response is then harvested from the animal(s) as antibodies or antisera. Not all animals are good antibody producers and only those animals which produce an acceptable level of antibodies are kept as producers and bled on a regular basis.

These facilities are "testing" the animals for their immune response and are selecting animals for production based on the response to this test. These facilities must, therefore, be registered as a research facility by definition. Licensing is not required.

(2) Facilities which harvest or produce only normal blood or sera are not testing animals but are selling parts of the animal which is maintained for this purpose. These facilities meet the definition of a dealer and must be licensed as such.

(3) Under the definition of "Commerce," those facilities with closed breeding colonies who produce their own animals "affect commerce" by the sale of their product and by the purchase of animal foods, health products, etc. A closed breeding colony, therefore, does not exempt them from the definition of dealer or research facility due to the effect on commerce. They must be licensed or registered as appropriate.

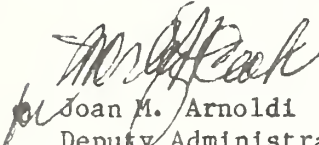
(4) The major or primary purpose of the animals' use must also be considered for licensing as a serum or blood producer. If the animals (usually rabbits) are raised and slaughtered for meat (food/fiber) and the blood/serum is collected at slaughter and sold, then licensing would not be required as food/fiber is the primary purpose for the animals.

However, if the animals are being maintained and bled on a regular basis, or are exsanguinated and then disposed of in non-food/fiber channels, licensing would be required as the primary purpose of the animals is for blood/serum.

The end use of the animal(s) does not affect registration as a research facility as they are "testing" all animals for the desired response and thus qualify as a research facility prior to disposal of the animals.

(5) Those facilities using domestic farm animals, such as sheep and goats, are subject to the same criteria as above and must be licensed or registered as appropriate.

If there are additional questions in regard to blood/serum/antibody production, please contact this office.



Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

Inspection of VA Hospitals or Other Animal Sites
Off Confines of Registered Research Facility Premise

Date: AUG 27 1990

Sector Supervisors
Animal Care Specialists
REAC Staff


We have recently been made aware that some registered research facilities are doing research on animals, or holding animals, at Veterans Administration Hospital facilities which do not comply with standards and that they are claiming they have no authority to make the VA Hospital correct identified noncompliance areas. This is not a valid excuse.

The definition of "research facility" in the Animal Welfare Act "means any school..., institution, organization, or person that uses or intends to use live animals in research, tests, or experiments, and that (1) purchases or transports live animals in commerce, or (2) receives funds under a grant, award, loan, or contract from a department, agency, or instrumentality of the United States for the purpose of carrying out research, tests, or experiments..."

Therefore, if a research facility owns the animals held at a VA Hospital facility, or other premise, or if the Federal funds for the research project are granted to the research facility, then the research facility is responsible for the animals and for compliance with regulations and standards regardless of where the animals may be held. If the VA Hospital will not correct the noncompliance areas, then the research facility has three options:

- 1) Correct the noncompliance areas themselves.
- 2) Move the animals to a facility which is in compliance.
- 3) Be written up for noncompliance with the AWA, regulations and standards.

If you have research facilities which have animals at VA Hospitals, or other offsite areas, they should be made aware that the research facility is responsible for compliance if they own the animals or the project is funded through the research facility. If the animals are owned by the VA and funding is to the VA, then it is a VA site and project, and it is not subject to USDA inspection. If you have any questions, please contact the Animal Care Staff.


Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

Section of the
County of Westchester

Page 1 of 1

1. The undersigned, the County of Westchester, do hereby certify that the following is a true and correct copy of the original as the same appears in the records of the County of Westchester.

2. The undersigned, the County of Westchester, do hereby certify that the following is a true and correct copy of the original as the same appears in the records of the County of Westchester.

3. The undersigned, the County of Westchester, do hereby certify that the following is a true and correct copy of the original as the same appears in the records of the County of Westchester.

4. The undersigned, the County of Westchester, do hereby certify that the following is a true and correct copy of the original as the same appears in the records of the County of Westchester.

5. The undersigned, the County of Westchester, do hereby certify that the following is a true and correct copy of the original as the same appears in the records of the County of Westchester.

6. The undersigned, the County of Westchester, do hereby certify that the following is a true and correct copy of the original as the same appears in the records of the County of Westchester.

7. The undersigned, the County of Westchester, do hereby certify that the following is a true and correct copy of the original as the same appears in the records of the County of Westchester.



Subject: Inspection of Animal Study Proposals
Approved by the IACUC

To: Dr. Debra Beasley, ACS

Date: AUG 8 1990

Through: Dr. Valencia Colleton, SS/AC
Annapolis, MD *nc*

This is in response to your memo requesting a clarification of the regulations and policy regarding inspection of Institutional Animal Care and Use Committee (IACUC) records.

The recordkeeping requirements for research facilities are contained in Section 2.35 of the regulations. Three items of record for the IACUC must be maintained by the research facility. These records are:

- 1) Minutes of IACUC meetings
- 2) Records of proposed activities involving animals
- 3) Records of semiannual IACUC reports

Furthermore, Section 2.38(b) requires that research facilities allow APHIS officials to examine and make copies of such records. Failure of the research facility to allow inspection of these records is considered a violation of the Animal Welfare Act. Any failure to allow inspection of records should be documented on the inspection report. It should be noted that the Animal Welfare Act and the regulations are not superceded by any contractual or legal agreement that may exist between the research facility and its clients regarding disclosure of such records.

It is recommended that the VMO's discuss these regulations with the research facilities that have not allowed inspection of these records or have questioned this procedure. As indicated previously, full compliance with these new regulations is expected by October 31, 1990.

T. D. Mandrell
Staff Veterinarian
Animal Care Staff
Regulatory Enforcement and Animal Care

1. The first part of the report is devoted to a general survey of the situation in the country.

2. The second part of the report is devoted to a detailed study of the various branches of agriculture.

3. The third part of the report is devoted to a study of the various branches of industry.

4. The fourth part of the report is devoted to a study of the various branches of commerce.

5. The fifth part of the report is devoted to a study of the various branches of science.

6. The sixth part of the report is devoted to a study of the various branches of art.

7. The seventh part of the report is devoted to a study of the various branches of literature.

8. The eighth part of the report is devoted to a study of the various branches of history.

9. The ninth part of the report is devoted to a study of the various branches of philosophy.

10. The tenth part of the report is devoted to a study of the various branches of religion.

11. The eleventh part of the report is devoted to a study of the various branches of law.

12. The twelfth part of the report is devoted to a study of the various branches of medicine.

13. The thirteenth part of the report is devoted to a study of the various branches of music.

14. The fourteenth part of the report is devoted to a study of the various branches of painting.



Subject: Dedicated Surgery Facilities

Date: JUL 31 1970


To: REAC Sector Supervisors
Animal Care Specialists
REAC Staffs

Questions have arisen regarding dedicated surgical facilities, survival surgery and non-survival surgery. The purpose of this memorandum is to clarify the regulations pertaining to these items.

A surgical procedure is considered survival if the animal is allowed to recover from anesthesia at any time during the procedure. If the animal does not recover from anesthesia during the procedure, the surgery is considered non-survival. The definition of major operative procedure, as per Section 1.1 of the Animal Welfare Regulations, is not applicable to non-survival procedures.

A dedicated surgery facility is the room or rooms that are operated and maintained under aseptic conditions for the purpose of performing major survival procedures. Non-survival surgery may be performed in this area only if aseptic conditions are maintained. Non-survival surgery may be performed in any appropriate laboratory or study area when aseptic conditions are not required.

All major survival operative procedures in non-rodents must be conducted only in dedicated surgery facilities. Any surgical procedures on small laboratory rodents (mice, rats, guinea pigs, hamsters, voles, gerbils) do not require a dedicated facility. Major survival operative procedures on large rodents (beavers, Woodchuck, prairie dogs, etc.) should be conducted in dedicated surgery facilities.


Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

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United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Regulatory Enforcement
and Animal Care

1 of 2
2568A Riva Rd. #302
Annapolis, MD 21401

Subject: Questions & Answers From The
Research Facility Course in Tulsa

To: All NE Sector Personnel

Date: June 10, 1991

As promised, enclosed is a list of questions and answers generated from the
Research Facility Course in Tulsa. These answers have been reviewed for policy
and clarity.

for
Valencia D. Colleton, D.V.M.
Northeast Sector Supervisor
REAC - Animal Care



W. L. R. 1000
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1000

1000

Q: Will we license dealers who supply farm animal species for research or nonagricultural exhibition?

A: We will license only farm animal dealers whose business is 100% purpose bred for research animals. We will not attempt to license dealers whose business includes the sale of farm animals to biomedical research and farm animals through livestock markets. We will not enforce transportation standards for dealers who sell both research/exhibit livestock as well as commercial livestock. Until further notice, we will regulate farm animals only at the research facilities and exhibitors if the research or exhibition is nonagricultural and when present at a licensed dealer's premise. We will license dealers who sell farm animals only if their business is 100% purpose bred research/exhibit animals.

Q: What are the qualifications of the attending veterinarian?

A: Attending veterinarian is defined in Section 1.1 of the regulations. He/she must be a graduate of an AVMA accredited school, have a certificate by the AVMA's Education Commission for Foreign Veterinary Graduates, or have equivalent formal education as determined by the Administrator. All veterinarians who do not meet these requirements and who wish to serve as an attending veterinarian must make a request to the Administrator. These requests should be referred to the Animal Care Staff.

The attending veterinarian must have training or experience in the species being attended. A lack of veterinary care demonstrated by insufficient knowledge of the species being attended as determined by the inspecting VMO could potentially be cited as noncompliance with Section 2.33 or Section 2.40. It is possible for any veterinarian to educate him/herself on the species being attended through continuing education, published materials, etc. Formal advanced training is not mandatory.

Q: Is a written program of veterinary care required for research facilities?

A: Section 2.33(a)(1) requires that each research facility employ an attending veterinarian under formal arrangements. If the AV is part-time or a consultant rather than a full-time employee of the facility, a written program of veterinary care must be established. A written program of veterinary care is not required when there is a full-time veterinarian at the facility.

Q: What is the "program of humane care and use of animals?"

A: Section 3.32(c)(1) requires the IACUC to review every 6 months the facility's program of humane care and use of animals. This means that the IACUC will review the research facility's program using the Animal Welfare regulations (9 CFR Subchapter A). This essentially involves the IACUC reviewing all aspects of animal care and use in the facility. There is no requirement for a formal, written "program of humane care and use of animals." The program, however, is the policies, procedures, and practices of animal care and use in the facility.

Questions and Answers
from
Animal Care Course
Tulsa, OK

Q: What records must be maintained at each research site?

A: Section 2.35(a) of the regulations outlines the requirements for IACUC recordkeeping at research facilities. Section 2.35(f) states that records..."shall be available for inspection...at reasonable times." It is not the intent of the recordkeeping requirement that IACUC records be maintained at each site of the research facility. Records at each site should indicate the protocol or study that the animals are assigned to. The title, a number, or code that uniquely identifies the approved protocol will be acceptable. If the site is distant from the headquarters or other facility where the IACUC records are maintained, there must be a means for making the records available to the inspector when it is determined that conditions or circumstances at the site warrant an inspection of the records that pertain to those animals which are maintained at that particular site. It is acceptable to make a protocol available by fax, mail, or document delivery service. This should not be employed for routine inspection of records, but reserved for special circumstances in which such records are required for verification or documentation of compliance. If the headquarter's facility where the IACUC records are maintained is within the VMO's section, the VMO should coordinate the records inspection and site inspection in such a timeframe that these inspections will be meaningful and relevant. If the facility where the IACUC records are maintained is located in another VMO's section, there should be communication between the VMOs and inspection reports should be exchanged. If Sector lines are crossed, i.e., if the headquarters and the site are located in different REAC Sectors, it is imperative that there is communication and exchange of inspection reports as coordinated through the respective Sector offices.

Q: The new requirements in Part 3 specifically require a perimeter fence for dogs on tethers as well as for outdoor housing facilities and the outdoor part of sheltered housing facilities for nonhuman primates. The regulations also state that these requirements are to be effective on or after February 15, 1994. Can we currently require facilities that are currently in the preclicensing process or new applicants to comply with the perimeter fence requirement before issuing a license?

A: As the authority for perimeter fences exists under the regulations for primary enclosures [Section 3.6(a)(2) Primary enclosures must...(ii) Protect the dogs and cats from injury; (iii) Contain dogs and cats securely; (iv) Keep other animals from entering the enclosure], we can require new applicants to comply with the perimeter fence requirement. It will be the policy to require compliance with the regulation for a perimeter fence before a license will be issued.

Q: How do we properly document on the 7008 new standards that may not be itemized on the form?

A: The relevant section of the regulation should be cited and the noncompliant item explained/documented.

Q: Farm animals are now covered by the regulations and we have announced that we will regulate them (Federal Register Vol. 55, No. 66, pp 12630-12631) beginning June 4, 1990. Are we to document deficiencies now or still just take an inventory?

A: Farm animals used in biomedical or other nonagricultural research, nonagricultural exhibition, or held by licensed dealers, are covered by the regulations. These animals should be inspected and the regulations should be complied with. Although there are no specific standards for farm animals, the regulations in Part 3, Subpart F are applicable. Noncompliant items should be documented, and these animals should now be fully regulated.

Q: What is the policy concerning multiple surgeries?

A: "A surgical procedure is considered survival if the animal is allowed to recover from anesthesia at any time during the procedure. If the animal does not recover from anesthesia during the procedure, the surgery is considered nonsurvival. The definition of major operative procedure as per Section 1.1 of the Animal Welfare regulations is not applicable to nonsurvival procedures.

The regulations prohibit an animal from being used in more than one major operative procedure from which it is allowed to recover unless justified for scientific reasons and approved by the IACUC or required as a veterinary procedure. Therefore, the IACUC may approve multiple, major operative procedures if justified for scientific reasons by the PI in writing and required for the protocol. The intent of this regulation is to prevent animals from needlessly being subject to more than one major operative procedure.

A dedicated surgery facility is the room or rooms that are operated and maintained under aseptic conditions for the purpose of performing major survival surgical procedures. Nonsurvival surgery may be performed in this area only if aseptic conditions are maintained. Nonsurvival surgery may be performed in any appropriate laboratory or study area when aseptic conditions are not required. Aseptic procedures should be utilized as necessary, based on professional judgment and in accordance with accepted professional practices.

All major operative procedures on nonrodents must be conducted only in dedicated surgery facilities. Any surgical procedures on small laboratory rodents (mice, rats, guinea pigs, hamsters, voles, gerbils) do not require a dedicated facility. It is recommended that major operative procedures on large rodents (beavers, woodchuck, prairie dogs, etc.) should be conducted in dedicated surgery facilities; however, technically it is not required by the regulations in that these animals are rodents, regardless of their size.

Q: What is the requirement for drainage and traps?

A: The requirement for drainage under Section 3.1 and 3.75 is not a new requirement. If closed drainage systems are used, drains must have traps which prevent the backflow of gases and the backflow of sewage. Properly constructed and installed regular drains with traps will accomplish this. This regulation does not specifically require drains with backflow valves. However, if there is a plumbing problem in a facility that routinely allows backflow of sewage onto the floor of an animal facility, additional measures such as a drain with a backflow valve may be required to remedy the problem.

Q: May the attending veterinarian give exemptions for the ventilation requirement for sheltered housing facilities for nonhuman primates?

A: The regulations in Section 3.77 allow the AV to approve temperatures above 85 °F if in accordance with generally accepted husbandry practices. However, the temperature must be maintained at a level that ensures the health and well-being of the animals. The attending veterinarian may not provide any exemption to the ventilation requirement. If the AV allows temperatures above 85 °F in the sheltered housing facility, auxiliary ventilation must be provided.

Q: Must the humidity be controlled in an indoor housing facility?

A: In Section 1.1 of the regulations, an indoor housing facility is defined as a facility with environmental controls. Such a facility must be capable of maintaining humidity levels of 30 to 70 percent. Furthermore, in Section 3.2 and Sec. 3.76, it states that the humidity must be maintained at a level that ensures the health and well-being of the animals being maintained. As per the definition in Section 1.1, this would be between 30 and 70 percent.

Friday
June 3, 1983

Part X

**Department of
Health and Human
Services**

Food and Drug Administration

**Memorandum of Understanding With the
Animal and Plant Health Inspection
Service and the National Institutes of
Health; Notice**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

(FDA 225-83-8400)

Memorandum of Understanding With the Animal and Plant Health Inspection Service and The National Institutes of Health

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has executed a memorandum of understanding with the Animal and Plant Health Inspection Service and the National Institutes of Health. The purpose of the agreement is to maintain and enhance agency effectiveness while avoiding duplication of efforts to achieve required standards for the care and use of laboratory animals. The agreement sets forth procedures of reciprocal cooperation which will assist each agency in meeting its responsibilities in promoting proper laboratory animal care and welfare.

EFFECTIVE DATE: The agreement was effective April 11, 1983.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC-50), Food and Drug Administration, 5600 Fisher Lane, Rockville, MD 20857, 301-443-1583.

SUPPLEMENTARY INFORMATION: In accordance with § 20.108(c) (21 CFR 20.108(c)) stating that all agreements between FDA and others shall be published in the Federal Register, the agency is publishing the following memorandum of understanding:

MEMORANDUM OF UNDERSTANDING AMONG

THE ANIMAL AND PLANT HEALTH INSPECTION SERVICE, U.S. DEPARTMENT OF AGRICULTURE, AND

THE FOOD AND DRUG ADMINISTRATION, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, AND

THE NATIONAL INSTITUTES OF HEALTH, U. S. DEPARTMENT OF HEALTH AND HUMAN SERVICES.

RELATING TO LABORATORY ANIMAL CARE AND WELFARE

I. Purpose

The participating agencies share a common concern for the care and welfare of laboratory animals used in research and testing. This agreement sets forth procedures of reciprocal cooperation which will assist each agency in meeting its responsibilities in promoting proper laboratory animal care and welfare. Implementation of this agreement is intended to maintain and

enhance agency effectiveness while avoiding duplication of efforts to achieve required standards for the care and use of laboratory animals.

II. Background

The Animal and Plant Health Inspection Service, USDA

Each participating agency operates under its own authority for fostering proper animal care and welfare procedure. Primary responsibility is assigned to the U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) as specified in the Animal Welfare Act and its implementing regulations (9 CFR Parts 1, 2 and 3). The USDA regulations establish standards for the humane treatment of laboratory animals and a registration procedure for identifying institutions that breed, sell, transport, hold and use such animals. Adherence to these standards is achieved primarily through voluntary compliance, although formal regulatory actions may be taken in cases of flagrant and serious noncompliance. These actions may range from the confiscation of suffering animals to the issuance of "cease and desist" orders. Compliance with the USDA regulations is monitored by an active inspection program that provides for periodic inspections by veterinary medical officers or suitably trained paraprofessionals.

Food and Drug Administration, HHS

The Food and Drug Administration (FDA) is also involved in ensuring proper procedures for the care and use of laboratory animals. The source statute is the Federal Food, Drug, and Cosmetic Act as implemented by the Good Laboratory Practice Regulations (21 CFR Part 58). These regulations establish standards for the proper conduct of nonclinical laboratory studies that include animals. Adherence to the regulations sought through voluntary compliance has been found to be effective in a majority of cases. Serious noncompliance is dealt with by procedures ranging from study rejection to laboratory disqualification. Compliance is assessed through an active program of periodic inspections carried out by trained field inspectors.

National Institutes of Health, HHS

The National Institutes of Health (NIH) implements the Animal Welfare Policy of the Public Health Service (PHS Manual Chapter 1-43 and NIH Manual Issuance 4208 and 6000-3-4.58).

Each institution which receives PHS support for research involving warm blooded laboratory animals is required to submit an acceptable assurance to

NIH which commits the institution to actively promote compliance with 12 basic principles for humane care and use of laboratory animals, and with the recommendations set forth in the *Guide for the Care and Use of Laboratory Animals*. Compliance is achieved by means of (a) Review and approval of assurances; (b) site visits to institutions in response to allegations of noncompliance; (c) a program of randomly selected site visits to institutions which utilize laboratory animals—for purposes of gathering information and promoting education; and (d) a nationwide education program relating to the care and use of laboratory animals.

In addition, where NIH scientific review groups conduct on-site visits to institutions to review proposed or ongoing research projects, they are encouraged to evaluate the adequacy of the care and use of laboratory animals. Finally, all scientific review groups that review research applications for scientific merit are expected to evaluate projects for compliance with the principles stated in the NIH policy when the use of laboratory animals is proposed. Clarification of responsibilities and procedures at both the institutional and NIH levels has been set forth by the Extramural Program Management Committee Task Force 2 on Laboratory Animals. Voluntary correction of unacceptable practices is the preferred method of achieving adherence to the policy, but possible sanctions for continued noncompliance range from the suspension or termination of support of a specific project or projects of an individual investigator to withdrawal of approval of the institution's assurance, without which the institution is ineligible to receive support for research involving laboratory animals.

Shared Concerns

Although there are necessary operational differences among the animal welfare programs of the cooperating agencies, it is clear that the agencies share a concern for the care and use of laboratory animals. Common program features include evidence of concern for the welfare of laboratory animals, the promulgation and application of established standards or policies related to animal care, the maintenance of a registry/inventory of institutions and facilities subject to agency policies and regulations, the periodic conduct of routine and directed inspections or site visits, the actions designed to promote voluntary compliance, and the authority to apply a range of sanctions when the need arises.

Interagency cooperation as to common efforts provides an excellent opportunity to achieve program benefits and facilitates program operations. By sharing a perspective on acceptable standards of laboratory animal care, the agencies present a consistent approach to the regulated entities intended to foster positive compliance attitudes.

III. Substance of Agreement

The participating agencies agree to share information of mutual concern and interest about animal care and welfare programs. To facilitate the implementation of this agreement, the cooperating agencies each agree to designate a liaison officer to serve on a standing committee that will meet at a frequency of no less than once per year. Matters for consideration are to include a review of each agency's participation in this agreement and an assessment of progress made so that necessary modifications can be made. As appropriate, the committee will also function to deal with urgent issues and specific cases of serious noncompliance.

Specifically, the participating agencies agree to:

(1) Share information contained in the registry/inventory/listing of establishments that fall under the purview of the cooperating agencies;

(2) Send to one another, each quarter, a listing of establishments that have been inspected or site visited. This listing is to be used in order to avoid redundant evaluations of the same entities;

(3) Provide to each other information on significant adverse findings concerning animal care and welfare revealed by inspections or site visits and on followup actions taken;

(4) Inform each other of evidence of serious noncompliance with required

standards or policies for care and use of laboratory animals (including defective assurances of compliance with PHS policies) in establishments that fall under the authority of the cooperating agencies;

(5) Request from each other comments and advice on regulatory or policy proposals involving animal care and welfare under consideration by any of the cooperating agencies; and

(6) Provide each other resource persons for scientific seminars, speeches and workshops related to animal care

IV. Liaison Officers

For the Animal and Plant Health Inspection Service:

Chief Staff Veterinarian, currently

Arnett Matchett, D.V.M., M.S.

Animal and Plant Health Inspection Service

U.S. Department of Agriculture, 6505 Belcrest Road, Hyattsville, Maryland 20782 301-438-7835

For the Food and Drug Administration:

Staff Scientist, currently Paul D. Lepore, Ph.D.

BioResearch Monitoring Staff, Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-2390.

For the National Institutes of Health: Director, currently Charles R. McCarthy, Ph.D.

Office for Protection from Research Risks, OD

Westwood Building, Room 3A18 (after February 1983 Building 31, Room 4B09 National Institutes of Health, Bethesda, Maryland 20205, 301-496-7005.

V. Period of Agreement

This agreement becomes effective on the date of last signature and continues indefinitely. It may be modified by

mutual written consent of the three parties. The agreement may be terminated by any party upon a 90 day advance written notice to other parties.

VI. Authorizing Officials.

For the Animal and Plant Health Inspection Service: James O. Lee, J.B.S., Acting Administrator.

For the Food and Drug Administration: Arthur H. Hayes, M.D., Commissioner.

For the National Institutes of Health: James B. Wyngaarden, M.D., Director

Approved and accepted for the Animal and Plant Health Inspection Service, U.S. Department of Agriculture:

By: James O. Lee, Jr., M.S.

Title: Acting Administrator, APHIS
Date: April 11, 1983

Approved and accepted for the Food and Drug Administration, U.S. Department of Health and Human Services:

By: Arthur Hull Hayes, Jr., M.D.

Title: Commissioner of Food and Drug
Date: March 22, 1983

Approved and accepted for the National Institutes of Health, U.S. Department of Health and Human Services:

By: James B. Wyngaarden, M.D.

Title: Director, NIH

Date: February 3, 1983

Effective date. This memorandum of understanding became effective April 11, 1983.

Dated: May 17, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs

(FR Doc. 83-14888 Filed 6-3-83; 8:45 am)

BILLING CODE 4160-01-M

Carriers/Interm.Handlers/
Transportation



Subject: Transport of Wild Young Animals

Date: APR 21 1992

To: Sector Supervisors
Animal Care Specialist

It has been brought to our attention that bear cubs and other young wild animals are transported, before weaning, with ill effects on their health because of lack of care, food, or water.

9 CFR, Section 2.130 addresses the minimum age requirements for dogs and cats, but does not cover other animals. For animals other than dogs and cats to be included in the age limits, a regulation change is necessary. Because the problem is not large, it is unlikely that we can obtain a change in the regulations. But, even without 9 CFR, Section 2.130, the care and treatment of other animals can be taken care of by other regulations. The definition of Handling is "...petting, feeding, watering, cleaning, manipulation, loading, crating, shifting, transferring, immobilizing, restraining, treating, training, working and moving, or any similar activity with respect to any animal."

9 CFR, Section 2.131 (Handling of Animals) (a)(1) states "Handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort."

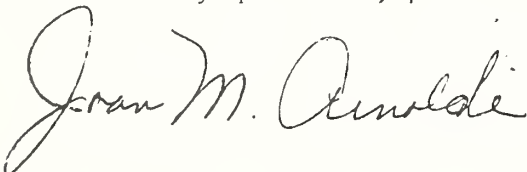
9 CFR, Section 2.40 (Adequate Veterinary Care) (a) states "Each dealer or exhibitor shall have an attending veterinarian who shall provide adequate veterinary care to its animals ... (b)(4) Adequate guidance to personnel involved in the care and use of animals regarding handling, immobilization, anesthesia, analgesia, tranquilization, and euthanasia; ..."

9 CFR, 3.139 (Food and water requirements of animals during transport) (a) states "all live animals shall be offered potable water within 4 hours prior to being transported in commerce. Dealers, exhibitors, research facilities, and operators of auction sales shall provide potable water to all live animals transported in their own primary conveyance at least every 12 hours after such transportation is initiated, and carriers and intermediate handlers shall provide potable water to all live animals at least every 12 hours after acceptance for transportation in commerce. Provided, however, that except as directed by hibernation, veterinary treatment or other professionally accepted practices, those live animals which, by common accepted practices, require watering more frequently shall be so watered. (b) Each live animal shall be fed at least once in each 24 hour period, except as directed by hibernation, veterinary treatment, normal fasts, or other professionally accepted practices. Those live animals which, by common accepted practices, require feeding more frequently shall be so fed."

9 CFR, Section 3.140 (Care In Transit) states "During surface transportation, it shall be the responsibility of the driver or other employee to visually observe the live animals as frequently as circumstances may dictate, but not less than once every 4 hours, to assure that they are receiving sufficient air for normal breathing, their ambient temperatures are within the prescribed limits, all other applicable standards are being complied with and to determine whether any of the live animals are in obvious physical distress and to provide any needed veterinary care as soon as possible. When transported by air, live animals shall be visually observed by the carrier as frequently as circumstances may dictate, but not less than once every 4 hours, if the animal cargo space is accessible during flight. If the animal cargo space is not accessible during flight, the carrier shall visually observe the live animals whenever loaded and unloaded and whenever the animal cargo space is otherwise accessible to assure that they are receiving sufficient air for normal breathing, their ambient temperatures are within the prescribed limits, all other applicable standards are being complied with and to determine whether any such live animals are in obvious physical distress. The carrier shall provide any needed veterinary care as soon as possible. No animal in obvious physical distress shall be transported in commerce."

If the transportation of underage animals becomes more of a problem in the future, we will then seek regulatory measures. In the meanwhile, the above regulations should more than adequately cover the situation.

If there are any questions, please contact the Animal Care Staff.

A handwritten signature in cursive script, reading "Joan M. Arnoldi". The signature is written in dark ink and is positioned above the typed name and title.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

Specific Pathogen Free Filter Crates

30 MAR 1992

Sector Supervisors, AC
Animal Care Specialists

There has been recent concern that perhaps the filter material used in Specific Pathogen Free (SPF) shipping enclosures does not allow for proper ventilation. We have taken this into consideration and decided on the following course of action:

As long as ventilation openings are at least the minimum required, and all the standards listed in regulations 3.14, 3.15, 3.16 and 3.17 are met (including a method for observing the animals), we have no objection to the use of SPF enclosures.

We have no evidence that filtered ventilation has caused any specific harm to animals. A search of the literature indicates that ammonia and carbon dioxide will increase in the filtered containers but significant levels are not reached for about 3 days. However, because the heat level is increased about 1 to 4 degrees over ambient air temperature, SPF shipping enclosures must always be kept within acceptable temperature levels in well ventilated areas. They should never be left in the sunlight.

This policy will be rescinded if it is demonstrated that SPF enclosures do compromise animal health and welfare.

If there are any questions, please call the Animal Care Staff.

Richard L. Crawford
Director
Animal Care Staff
Regulatory Enforcement
and Animal Care

cc:
Morley H. Cook, REAC
Thomas K. Shehan, REAC-AC
Jerry D. DePoyster, REAC-AC

APHIS:REAC:RLCrawford:ojs:436-7833:03/24/92:memo.Specific.Pathogen.Free



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

1 of 2

Subject: Intrastate Health Certificate Requirements for Dogs and Cats - Change
In Memorandum Dated October 24, 1991, Transportation of Dogs and Cats -
Minimum Age and Health Certificate Requirements

To: REAC Management Team
Animal Care Specialists

Date: MAR 6 1992

ATTENTION: THIS DOCUMENT SUPERCEDES THE PREVIOUS POLICY STATEMENT
ON HEALTH CERTIFICATES, DATED OCTOBER 24, 1991 (COPY
ENCLOSED). THE REMAINDER OF THE OCTOBER 24, 1991,
MEMORANDUM IS STILL VALID AND IN EFFECT.

The previous policy on health certificates for dogs and cats stated that the regulation (9 CFR 2.78) does not provide an exemption for the health certificate requirement if animals are transported within the boundaries of a State. We have reviewed this requirement and find that the requirement for intrastate health certificates for dogs, cats and primates transported in a dealers own private vehicle, solely within the State, is an unnecessary burden on dealers and is also in conflict with State requirements.

Most dogs, cats, and primates transported by dealers are usually moved for short distances and short periods of time in the dealers private vehicle. Additionally, States do not require health certificates for dogs, cats, and primates moved within the State by private vehicle. In order to better coordinate with State requirements and to remove an unnecessary burden from dealers, the following change is made in the health certificate requirement.

A health certificate issued within 10 days of shipment by a licensed veterinarian must accompany any dog, cat, or primate that is transported in commerce by a licensee or registrant (9 CFR 2.78). Provided, however, that dogs, cats, or primates, transported solely within the State and transported in a dealers privately owned vehicle, may be transported without a health certificate.

Dogs, cats, and primates transported intrastate by commercial carrier are required to have a properly executed health certificate. All dogs, cats, and primates transported interstate, or in foreign commerce, are required to have properly executed health certificates.

The above proviso is effective immediately and will be added to the regulations at the first opportunity.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

Enclosure
APHIS-104-110 American Agriculture



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

2 of 2

Subject: Transportation of Dogs and Cats - Minimum Age
and Health Certificate Requirements

Date: OCT 24 1991

To: REAC Management Team

ATTENTION: THIS DOCUMENT SUPERCEDES THE PREVIOUS POLICY STATEMENT DATED
FEBRUARY 23, 1990, TITLE CLASS B DEALERS AND PUPPIES FOR THE
PET TRADE

The previous policy of February 23, 1991, on transportation of puppies by
Class B dealers stated that a Class B dealer could transport puppies for the
pet trade that are less than 8 weeks of age.

The related Animal Welfare Regulation Part 2, Subpart I-Miscellaneous,
{2.130 Minimum age requirements - (states) "No dog or cat shall be delivered
by any person to any carrier or intermediate handler for transportation, in
commerce, or shall be transported in commerce by any person, except to a
registered research facility unless such dog or cat is at least (8) weeks of
age and has been weaned."

The only occasion a licensee or registrant may transport a dog or cat less
than 8 weeks of age is directly to a registered research facility. NOTE:
Dogs and cats less than 8 weeks of age cannot be transported in commerce for
the pet trade by a licensee or registrant.

A health certificate issued within 10 days of shipment by a licensed
veterinarian must accompany any dog, cat, or primate that is transported in
commerce by a licensee or registrant. re: (Part 2, Subpart G-Records, {2.78
Health certification and identification, (a)-(c). ~~The regulation does
not provide an exemption for the health certificate requirement if animals are
transported within the boundaries of a State. NOTE: All dogs, cats, and
primates transported in commerce by a licensee or registrant must be
accompanied by a properly executed health certificate.~~

Any deviation to the above procedures is a noncompliant item and must be
documented on the APHIS Form 7008.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care





Subject: Animals Transported on
International Airway Bills

To: REAC Management Team
REAC Inspectors

Date: NOV 04 1991

The authorities of the Animal Welfare Act are applicable only within the United States and its possessions or territories.

The following policy will be followed for animals transported on International Airway Bills (IAWB).

Animals Imported into the United States

Regulated animals that enter United States Territory on an IAWB and that are contained in primary enclosures that do not comply with the transportation standards will be allowed to continue to their destination without an alleged violation case being developed as long as the shipment remains on an IAWB. If the IAWB terminates in the United States and the shipment continues on a new Domestic Airway Bill, the shipment must be in compliance with transportation standards or will be written up as an alleged violation for the accepting airline.

Deficiencies in IAWB animal shipments should be documented and sent to the Animal Care Staff so that the involved airline can be notified and advised of requirements for animal shipments.

Animals Exported from the United States

All regulated animals exported from the United States on an IAWB must be in compliance with the transportation standards. If such shipments are not in compliance, an alleged violation case should be developed against the carrier or intermediate handler and against the consignor if he/she is licensed or registered.

Domestic Shipments

All regulated animals shipped within the United States, its territories, or possessions must be in compliance with transportation standards or have an alleged violation case developed. If the consignor is licensed or registered, a case should be developed against him/her for transporting and delivering for transportation, a noncompliant transport enclosure, as well as against the carrier or intermediate handler for accepting a noncompliant transport enclosure.

If you have any questions regarding this policy, contact your Sector office, your Animal Care Specialist, or the Animal Care Staff.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and Animal Care



United States
Department of
Agriculture

Animal Industry
Bureau
Washington, D. C.

10-10

Subject: *Animal Industry*
Instruction

1824-10-10
10-10

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United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject: IATA Live Animal Stickers for Kennels
Used to Ship Animals

Date: JUL 30 1991

To: REAC Management Team

This is to clarify the policy on the use of the pre-printed stickers recommended for use on kennels.

This memo is to allow International Air Transport Association (IATA) to continue to use their existing stock of fluorescent labels. The enclosed copy of the sticker recommended by IATA is authorized for use as the live animal markings on kennels for shipping animals. IATA's present stock of markers do not have letters that are 1-inch high, but we have agreed to allow the use of the markers until a new marker is printed. The marker satisfies the intent of the regulations, and when the new ones are printed, the letters "Live Animals" will be 1-inch high per regulations.

Should you need further information, please contact the Animal Care Staff.

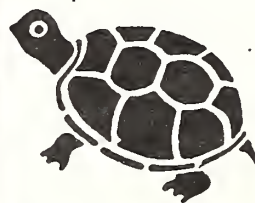
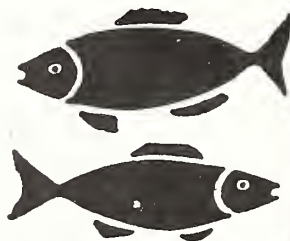
Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

Enclosure



APHIS—Protecting American Agriculture

LIVE ANIMALS



CONTENTS

'NORTHWEST AIRLINES

88-0110-3-8144



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject: Inspection of Terminal Facilities of
Carriers and Intermediate Handlers

Date: JUL 15 1991

To: REAC Management Team

This is to clarify the policy on inspections that do not have animals on the premises.

The regulations and standards do not require an airline terminal facility to have a designated animal holding area. The standards for terminal facilities may only be applied when animals are present.

Return transportation charges on COD shipments must be guaranteed in writing by the shipper. This does not mean the guarantee must accompany the animal, nor does it mean the guarantee must be on the air waybill. The airline must have it on file, but it may be at the main headquarters. If an airline is to be written up, it must be documented that the airline does not have a guarantee on hand or in their files. Letters of credit on file with the airline are satisfactory for written COD guarantee.

When animals are present they must not be commingled with inanimate cargo. Commingled means the animals should not be scattered throughout the warehouse, but held in a central area together. They should not be held so close that if something falls off stacked cargo it could strike and possibly injure the animals. Nor should cargo be stacked close enough or in such a way as to hamper air flow and injure the animals. No prohibited cargo such as radioactive materials should be stacked in close proximity to the animals.

Should you need further information, please contact the Animal Care Staff.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care



APHIS—Protecting American Agriculture





United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject: Compliance with New Transportation Standards
Dealers, Exhibitors and Research Facilities

Date: MAR 15 1991

To: REAC Management Team

New Transportation standards for dogs, cats and nonhuman primates were published in the Federal Register on February 15, 1991, and become effective on March 18, 1991. It has been brought to our attention by several dealer organizations that many dealers will not receive copies of the new standards in time to make the necessary changes by the March 18, 1991, deadline (e.g., food and water requirements) and may; therefore, not be able to achieve compliance by the deadline.

In order to provide a reasonable amount of time for registrants and licensees to comply with the new transportation standards, we are granting a 60-day extension period of the March 18, 1991, deadline for implementation. Effective May 17, 1991, all licensees and registrants must comply with the new transportation requirements for dogs, cats, and nonhuman primates. Until that time, the present transportation standards will remain in force. The present transportation standards will continue in force for animals other than dogs, cats, and nonhuman primates.

Please advise all REAC inspectors of this 60-day extension period. If you have any questions, please contact the Animal Care Staff.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care



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United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Federal Building, Room 208
Hyattsville, MD 20782

Subject: Carrier Shipments of Animals
Containing Human Remains

Date: JUL 24 1990

To: REAC Management Team

The issue of shipping animals, coming under the Animal Welfare Act (AWA), along with human remains containing embalming fluid has been brought to the REAC Staff's attention.

Animals are not to be transported with cargo containing bulk shipments of formaldehyde. It is permissible, however, to allow caskets determined to be leak proof to be transported with the animals. Therefore, the animals may accompany human remains when this safeguard and all other pertinent AWA regulations are in compliance.

Please contact the Animal Care Staff if you have further questions.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care





Subject: Ventilation Requirements for Transportation of
Horses and Farm Animals

Date: MAY 14 1990

To: REAC Staff
REAC Sector Supervisors, AC and RE
REAC Animal Care Specialists

It has been brought to our attention by the Air Transport Association of America (ATA) that the ventilation standards set forth in Part 3, Subpart F, Section 3.137(a)(4) do not properly address the accepted and the normally used shipping crates for horses and some other farm animals. Section 3.137(a)(4) requires a certain percentage of ventilation holes in the sides of the primary containers used to ship animals. The normal and accepted method of shipping horses, and some other farm animals, is by open top stalls or pens with no ventilation holes in the sides of the enclosure.

In reviewing the rest of the transport requirements, it appears that Section 3.137(a)(5) "projecting rims," and (6) "handholds" are also not normally applicable to most horse or farm animal shipments. Please inform REAC inspectors that allowances should be made in regard to ventilation, projecting rim, and handhold requirements when horses and farm animals are transported under Animal Welfare regulations. This will continue until standards are developed for these animals.

Also, please emphasize to REAC inspectors that most horse and farm animal transport will not be subject to Animal Welfare regulation. Most such shipments are concerned with food or fiber, breeding, racing, showing, or other similar type endeavors which are exempt from the Animal Welfare Act. Horses are only regulated when transported for nonagricultural research purposes. Other farm animals are regulated during transport only when transported for nonagricultural research or exhibition purposes, wholesaled into the pet trade, or transported by a licensed dealer.

Care will therefore have to be used in applying transportation standards to horses and farm animal shipments, as most shipments will probably not fall under the AWA. If questions arise, the Sector offices or staff should be contacted for guidance.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

San Francisco, California
January 1, 1924

Dear Sir:

I have the honor to acknowledge the receipt of your letter of December 18, 1923, in relation to the above-captioned matter. The same has been referred to the proper authorities for their consideration. I am sorry to hear that you are unable to furnish the information requested. It is, however, necessary that you should be able to do so in order that the proper authorities may be able to make a proper decision. I am sure that you will be able to do so in the future.



United States
Department of
Agriculture

Animal and
Plant Health
Inspection Service

Subject: Food and Water Instructions for
Animals In Transport

To: See Distribution

Date: MAR 14 1990

The question has arisen as to whether the statement "DO NOT FEED OR WATER" is sufficient instruction when shipping animals. This statement alone is not acceptable since it does not tell how to feed and water. The possibility of unforeseen delays in transit should be considered. Acceptable food and water instructions should include any special requirements the animal may have. This would satisfy the intent of the regulations as written.

It is recommended that all dealers include the time and date the animals were last fed and watered in their instructions. This would make it possible to determine when the animals would be due to be offered feed and water enroute.

All carriers and intermediate handlers should be made aware of this recommendation. Their help should be enlisted in educating the licensed dealers and the public to be aware of unforeseen delays thereby ensuring that proper instructions be placed on kennels when shipping animals.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

Distribution:

All REAC Field Employees

All REAC Headquarters Staff

HP Program Procedures/
Info.

April 21, 1992

Mr. David Swingley, President
Western International
Walking Horse Association
N. 9009 Lehman Road
Spokane, WA 99207

Dear Mr. Swingley:

This is for clarification of policy relating to the Horse Protection Act (HPA) and 9 CFR, Section 11.20(c) of the Horse Protection regulations, a section that concerns the number of Designated Qualified Persons (DQPs) necessary to inspect horse shows.

There was a proposed change published in the Federal Register June 6, 1991, for public comment. The comment period closed July 8, 1991, and proper review was made of the comments submitted. One of the proposals stated that shows/sales having more than 150 horses will require two or more DQPs to be assigned to perform horse inspections. The present regulation states that shows having 100 or more horses will require two DQPs. In order to have uniformity of interpretation and relieve any burden on show/sale management, APHIS policy, pending the final rule, will permit the 150 horse requirement. Routine inspections will continue to be limited to the Tennessee Walking Horse (TWH), Racking Horse (RH), Fox Trotter (FT), and Spotted Saddle Horse (SSH), the breeds established as most frequently sored. In determining the number of horses to meet DQP regulatory requirements, only horses of the above breeds will be considered.

A second concern is related to certain duties that a DQP and Veterinary Medical Officer (VMO) have in enforcing the HPA and regulations. While inspecting shows/sales oftentimes violations are observed in breeds of horses other than the above. Although there may be major violations to deal with, most of the violations are minor in nature and must be addressed as part of the duties in the enforcement of the HPA. In order for the DQP/VMO to fulfill their required duties, they must enforce the law by taking appropriate action against those in violation.

Mr. David Swingley

2

If further clarification is needed, please contact Dr. R. L. Crawford, Director, Animal Care Staff, Regulatory Enforcement and Animal Care, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 565-FB, 6505 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436-7833.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and
Animal Care

CC:
REAC Management Team
J. Zisk, REAC-AC, Hyattsville, MD
S. Gallagher, REAC-AC, Hyattsville, MD

Similar Letter Sent To:

Mr. Rodger Weaver, President
Heart of America
Walking Horse Association
8233 Brentwood Industrial Drive
St. Louis, MO 63144

Mr. Roger Hand
National Horse Show
Commission, Inc.
P.O. Box 167
Shelbyville, TN 37160

Mr. Bill Roark
Missouri Fox Trotters
Horse Breeding Association
P.O. Box 1027
Ava, MO 65608

Mr. Robert Morgan
Spotted Saddle Horse Breeders
and Exhibitors Association
P.O. Box 1046
Shelbyville, TN 37160

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United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject:

1992 Horse Show Season

Date: APR 14 1992

To:

Sector Supervisors, REAC
Animal Care Specialists, REAC
Veterinary Medical Officers, REAC

I would like to explain our plans for enforcement of the Horse Protection Act (HPA) during the 1992 Show season, which is now underway.

The approach will be somewhat different this year. There will be a two-tiered approach to bring about compliance with the Act. You may be asked to participate in either an inspection team or a monitoring team. The enclosed issue paper describes these approaches in more detail.

In late February, the new officers of the National Horse Show Commission came to Hyattsville and we discussed the upcoming show season. We all agreed and are committed to an increased effort toward mutual respect, professionalism, and cooperation by everyone involved in this difficult task. I am asking each of you to personally dedicate your actions to achieving this goal.

Mr. Stephen B. Smith, Chairman of the National Horse Show Commission, in the spirit of cooperation, has written a similar letter to all DQP's of which I am enclosing a copy for your information.

I appreciate your past activities in this program and look forward to your ongoing cooperation in our role as regulators under the HPA.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

2 Enclosures



APHIS ACTIVITIES FOR THE 1992 HORSE SHOW SEASON

APHIS will take a new approach to its inspection and education responsibilities as follows:

1. Inspection Teams:

Three teams of experienced, well-qualified VMO's and investigators will perform indepth inspections of a limited number of horse shows in FY 1992. These teams will be coordinated by the Animal Care Staff at Headquarters.

2. Monitoring Teams:

At the Sector level, teams consisting of one VMO and one investigator will visit as many horse shows as possible on a given weekend. Their duties will consist of meeting with Show Management to explain their responsibilities and the correction(s) to be made. They are to observe the DQP's and make suggestions for improvement. If the DQP is not meeting his responsibilities after an attempt has been made at correcting, the VMO will take action to write up the DQP and/or management as necessary. This team's directive should be educational, first, to gain compliance and regulatory actions, secondly. It may be necessary, on occasion, to inspect a few horses for signs of soring to evaluate the DQP's work.

APHIS must attempt to make the DQP system more effective by:

- a. Participating more heavily in training of DQP's.
- b. Auditing records of USDA certified organizations and show management.
- c. Taking action against those DQP's who are not effectively enforcing the HPA, regulations, and the certified organizations' penalty system.
- d. Working closely with DQP's and Horse Show Management to make certain that they understand their responsibility under the Act and regulations.

APHIS must continue to work with industry officials toward a team-oriented approach and eliminate the confrontational approach at all levels in each organization. This requires a very professional and patient attitude by all concerned.



National Horse Show Commission, Inc.

P. O. BOX 167 • SHELBYVILLE, TENNESSEE 37160 • TELEPHONE 615/684-9506

TO: ALL NHSC LICENSE DQP'S

FROM: STEPHEN B. SMITH, CHAIRMAN
NATIONAL HORSE SHOW COMMISSION

DATE: MARCH 12, 1992

On February 20, 1992 representatives from the Walking Horse Industry met with Dr. Joan Arnoldi and other USDA staff in Washington, D.C. This was a good meeting and all agreed to more open communication for the coming show season.

Hopefully by meeting and discussing problems encountered during the 1991 show season, difficulties can be avoided for the 1992 show season.

As D.Q.P.s, I am urging your continued professional co-operation, respect, and attitude with USDA VMOS. Dr. Arnoldi has agreed to write all VMOS urging the same co-operation and respect to you as D.Q.P.s.

Industry representatives will continue to communicate with USDA in an effort to make the 1992 show season a success.

Any additional information will be more available to you. I look forward to working with you as chairman of the National Horse Show Commission.

cc: Dr. Joan Arnoldi



Subject: Horse Show Inspections - FY 1991

To: REAC Management Team
Animal Care Specialists

Date: FEB 28 1991

When USDA, REAC, VMO'S inspect horse shows during the 1991 show season the following guidelines should be followed:

Pre-Show Inspections:

Horses in not less than one-third of the classes should be inspected and not less than 15 percent of the horses entered should be inspected pre-show.

Post-Show Inspections:

Horses in not less than 50 percent of the classes should be inspected and not less than 15 percent of the horses entered should be inspected post-show.

Bad Image Horses:

Occasionally what is termed a "Bad Image Horse" will be brought for inspection pre-show. These horses show a reluctance to move; have difficulty in walking; often stumble; and have a sore horse stance, with the feet together, when standing. They may or may not show a tucked abdomen and excessive sweating or respiration. Often times pain or sensitivity can not be found on palpation/inspection.

In the past we have not become involved with the "Bad Image Horse." Starting with the 1991 Show season REAC inspectors at horse shows are to carefully examine bad image horses and document them as "sore horses" even if pain or sensitivity can not be found on palpation. The examination should include walking the horse and turning it in tight turns; having the horse ridden, with action devices, if necessary; and a physical examination. All findings should be carefully documented and affidavits obtained from the attending DQP'S as to their findings. Detailed and explicit explanations of how such a horse moves and behaves along with the VMO's professional opinion will be very important in documenting these cases, especially if pain or sensitivity can not be found on regular inspection.

Should you have any questions, please contact this office or the Animal Care Staff.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

Federal Building, Room 208
Hyattsville, MD 20782

March 23, 1990

Clarification of Scar Rule -
Horse Protection 1990

Sector Supervisors, Animal Care

This is to clarify the Scar Rule addressed in a memorandum (Horse Protection 1990) distributed at our Horse Protection Training Course in Murfreesboro, Tennessee, on February 15, 1990.

Item No. 8 of the memorandum is revised due to confusion that arose regarding its interpretation. Therefore, the deep flexor tendon, mentioned in the memorandum, will not be used as a guideline in making Scar Rule determinations.

The posterior surface of the pastern may have bilateral uniform thickened epithelial tissue. These areas must be free of moisture, irritation, edema or proliferating granuloma tissue, or other evidence of inflammation (Section 11.3, Scar Rule). The lateral and medial surfaces of the pastern should be free of any evidence of soring. The tissue surfaces (medial and lateral) must be pliable and have evidence of hair growth in order to comply with Section 11.3 of the Horse Protection Regulations.

The Animal Care Staff is reviewing probable Scar Rule policy revisions. These modifications will identify certain changes in Scar Rule interpretation and include projected dates for compliance.

Please advise all field inspectors.

Morley H. Cook
Associate Deputy Administrator
Regulatory Enforcement and Animal Care

cc:
R. L. Crawford, AC, Hyattsville, MD



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Federal Building, Room 208
Hyattsville, MD 20782

Subject: Horse Protection - 1990

Date: FEB 8 1990

To: Sector Supervisors, Animal Care

Policies concerning the 1990 show/sale season will be much the same as the previous season; however, there are some areas that need clarification.

1. Questions have arisen as to who (Designated Qualified Person (DQP) or Veterinary Medical Officer (VMO)) is responsible for the reporting of an alleged sore horse found during the pre-show inspection.

The DQP is responsible for reporting immediately to management an alleged sore horse he/she found during pre-show inspection. If an APHIS VMO alleges a horse to be sore, and the DQP does not agree to report the horse, the VMO is obligated to advise management that the horse is sore.

If there is disagreement, the VMO's independent decision will prevail regarding a horse the VMO found sore, and management must be advised of that determination. Section 4 (b) of the Horse Protection Act states as follows: "The management of any horse show, sale or auction shall prohibit the sale or auction or exhibition for the purpose of sale of any horse (1) which is sore or (2) if the management has been notified by a person appointed in accordance with regulations under subpart (c) or by the Secretary that the horse is sore."

2. There has been a concern for consistent, uniform, quality inspections. The Department is committed to the elimination of soring in horses through a high standard of professional examination and inspection by VMO's, as well as appropriate investigative procedures by Regulatory Enforcement. Supervisors must be assured that inspectors have attained a satisfactory level of competency in horse protection to make appropriate determinations at shows/sales.

3. During a recent meeting with leaders in the horse industry, it was agreed that two DQP's (or more depending on the size of the show) would be assigned to shows that have a history of 75 or more horses. This is for your information and guidance.

4. The DQP shall be evaluated as acceptable or not acceptable on the areas of responsibility shown on the reporting form HP 19-1. Unacceptable ratings must be supported by comments giving the reasons for such a rating. In those instances where the DQP does not properly enforce the rules and regulations, the show veterinarian



should evaluate all areas of noncompliance and make the determination as to whether a letter of warning is recommended. As a guideline, an error rate of more than 2 percent is an unsatisfactory performance and should be cause for requesting a letter of warning. The error rate should include technical violations as well as sore horses.

The request for a letter of warning should be submitted to the Sector Supervisor, Animal Care, for review. The Sector Supervisor is requested to make a recommendation and forward the HP 19-1 and other pertinent correspondence to the Animal Care Staff for proper action.

5. Gaited horses - There is an increasing number of all breed horse shows. It will be a policy during the 1990 show season to inspect those breeds that may use soring as a means of improving their gait. All aspects of the Horse Protection Act (HPA) and horse protection regulations apply to all breeds as well as the TWH and Racking horses. Gaited horses tying first, second, or third should be presented for post-show inspection. If necessary, the show veterinarian has the authority to inspect any horse pre-show and/or post-show.

6. Horses showing signs such as tucked up abdomen, stumbling, difficulty turning, moving or other signs of a "Bad Image" horse, should be referred to the DQP for appropriate action. If the DQP fails to write up the horse, the VMO should write an alleged sore horse violation against the responsible person(s). The horses that the VMO has difficulty in making a determination should be referred to the DQP for proper action rather than spending additional time in further examination.

7. Available resources limit the number of shows/sales REAC can monitor each year. Therefore, we need a strong DQP system to carry out inspections at shows that REAC will not attend. We should make every effort to utilize the DQP program and give our professional assistance to the responsible certified organizations.

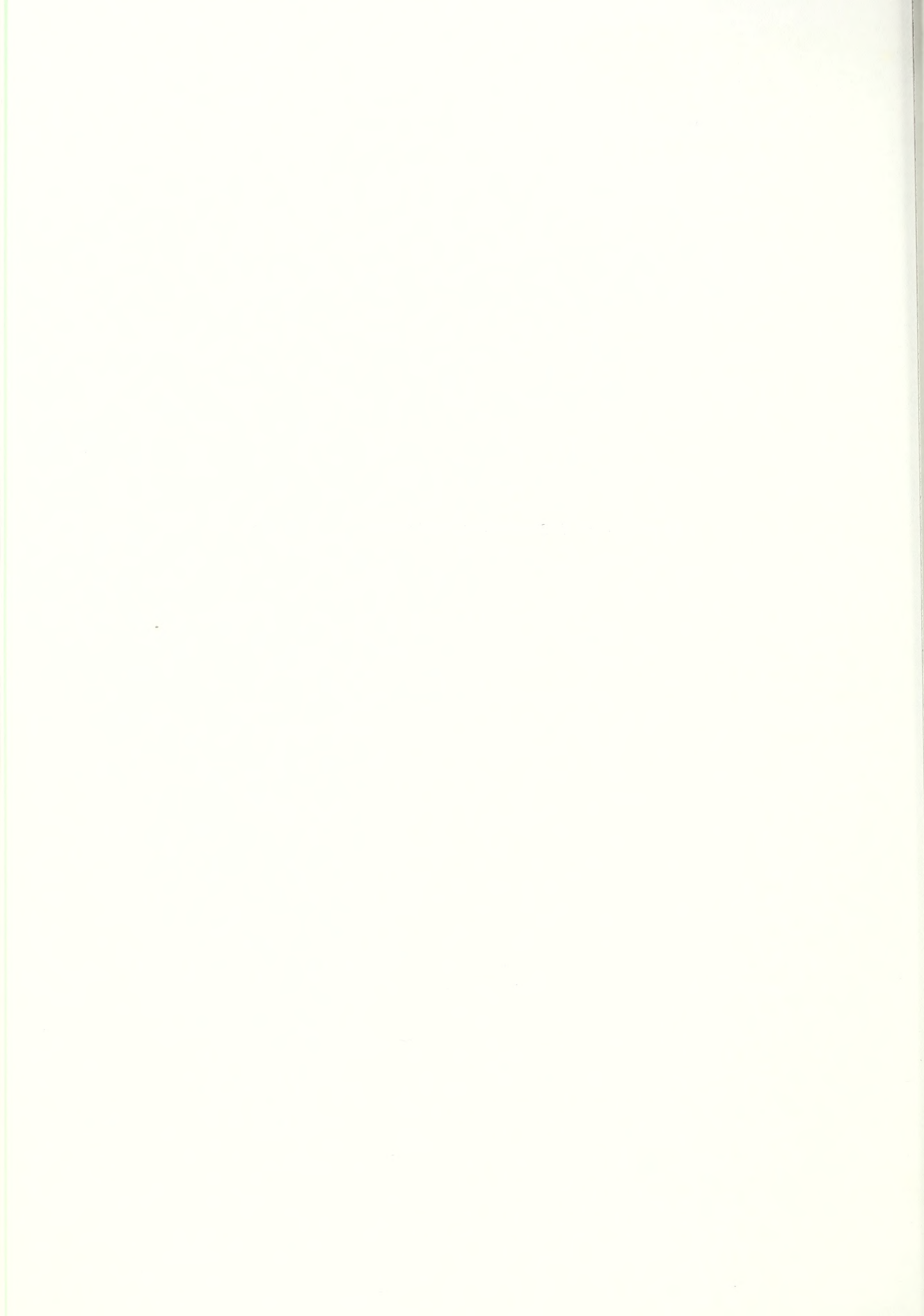
8. Scar Rule - The Scar Rule will be enforced according to the regulations (Section 11.3). It will be Department policy to meet this requirement by better identifying the limitations of the posterior surface of the pastern. The large tendon (the deep flexor tendon) that is prominent on both the medial and lateral surfaces of the posterior pastern will be used as a guideline. The tissue changes allowed in this section (11.3 (b)) shall not extend forward (anteriorly) beyond the posterior surface of the large tendon.

Horses identified as in violation of the Scar Rule should be written up by the DQP. Those cases that the DQP does not agree to write up must be addressed and acted on by an APHIS show veterinarian. All horses written up as a Scar Rule violation by the show veterinarian shall be considered "sore." Section 11.3 reads in part, "The Scar Rule applies to all horses born on or after October 1, 1975. Horses subject to this rule that do not meet the following Scar Rule criteria shall be considered to be 'sore' and are subject to all prohibition of Section 5 of the Act."



Morley H. Cook
Associate Deputy Administrator
Regulatory Enforcement and Animal Care

Regulatory Enforcement Policy





Subject: Update on Regulatory Enforcement Policy

Date: April 24, 1992

To: All Regulatory Enforcement Personnel

Enclosed is the revised and updated "Procedures for Documenting and Submitting Investigative Case Reports" memorandum for the Blue Book. There were enough comments and recommendations for changes that we decided to reprint the memorandum in its entirety.

Please take the time to review the memorandum and use it as a reference on a continual basis.

Senior Investigators, Enforcement Specialists, Sector Supervisors, and the Regulatory Enforcement Staff should use the guide as a basis for evaluating case reports.

Ron D. Stanley
Assistant Deputy Administrator
Regulatory Enforcement

Enclosure





April 24, 1992

Subject: Procedures for Documenting and Submitting
Investigative Case Reports

To: All Regulatory Enforcement Personnel

I. PURPOSE

To assign responsibility and accountability within Regulatory Enforcement (RE) for the preparation and submission of investigative reports documenting violations of Federal laws and regulations under APHIS jurisdiction.

II. CANCELLATION

Veterinary Services Memorandum No. 576.3, May 17, 1984, is hereby replaced for Regulatory Enforcement personnel only.

III. GENERAL

The Regulatory Enforcement Program provides enforcement support to all APHIS programs. When there is reason to believe that a violation has occurred the program representative should request enforcement assistance in writing from the Regulatory Enforcement Assistant Deputy Administrator, Sector Supervisor, or the respective Senior Investigator. Regulatory Enforcement will respond, prepare an investigative report of findings and recommendations and submit a copy to the appropriate program official for their recommended resolution.

Final resolution of the violation "case" will include the following factors: The gravity of the violation, the effect on the program, the deterrent factor to the violator and to others, willfulness by the violator, and the priority of other cases already underway at headquarters and the Office of the General Counsel (OGC).



IV. PROCEDURES

A. Responsibilities for Investigations

1. The Regulatory Enforcement Staff (RES) Investigation Specialists will monitor compliance and enforcement procedures and activities in the Sectors. They will coordinate compliance and enforcement liaisons within the Department, the OGC, outside Agencies and Departments, and with industry. They will provide advice and assistance to field personnel pertaining to compliance and enforcement procedures, regulations interpretation and prosecutive merit whenever needed.
2. The RE Sector Supervisors will implement compliance and enforcement procedures and activities in the Sector consistent with national policy. The Sector Supervisor will monitor all compliance and enforcement activities in the Sector.
3. The Sector Enforcement Specialists will provide technical assistance and assist with inspections or investigations of special importance or when workload demands. They will also provide investigation assistance to APHIS officials.
4. The Senior RE Investigators will implement enforcement procedures and activities in the Sector consistent with national policy. The Senior Investigator will coordinate and document investigations within their area of responsibility. The Senior investigator or designee will provide additional information to other field offices, the OGC or the RE Staff as may be required.
5. The RE Investigators will implement enforcement procedures and activities in the Sector consistent with national policy.

B. Case Numbering System

1. Initiating the Case Number (Case ID)
 - a. To assign a Case ID each field investigator initiating a case will enter the case into the Compliance Investigation Tracking System (CITS). This number will be: (1) the standard two alpha-abbreviated State code of the State initiating the case, (2) the last two numbers of the fiscal year, and (3) a three-digit

number to identify the case (the three-digit number will be assigned sequentially beginning with 001 each fiscal year).

- (1) Animal Care Warning Notices and Stipulations will be assigned a case number when entered into CITS by Animal Care Sector or RES.
2. For purposes of identifying the program involved, the program code may follow the Case ID on reports and other written correspondence. This code is not part of the actual Case ID in the CITS. Example: PA90001-AQ

3. Program Codes to be used for cases:

AQ	-	Animal Quarantine
AW	-	Animal Welfare
BI	-	Biotechnology
FB	-	Fraudulent Blood Samples
FC	-	False Monetary Claim
HP	-	Horse Protection
IN	-	Investigation ¹
PQ	-	Plant Protection and Quarantine
SE	-	Salmonella Enteritidis
SH	-	Swine Health Protection
ST	-	State Violation
US	-	United States Code
VA	-	Veterinary Accreditation
VB	-	Veterinary Biologics

This number will be used by every field/sector office, the RE Staff, and the OGC as a control number on all subsequent correspondence involving each specific case.

¹ Please note that the "IN" (Investigation) code was designed for temporary field use only, to help Investigators manage their cases when the actual program violated may be in doubt at the outset of investigation. "IN" Case codes must all first be changed to the correct program code listed above before being closed or referred to RE Staff or OIG.

C. Case Investigation Guidelines

1. Timeframes for investigations
 - a. Normally cases should be investigated and reported within 60 calendar days as counted by CITS MBO clock. The only time the CITS MBO clock should be stopped during an investigation, is when a request for additional information has been made to another State.
 - b. When an initiating field investigator requests a supplemental investigation (additional information) from another area, the initiating field investigator's time stops and does not resume until the information is received from all contributing areas. Each field investigator contributing to the investigative file should respond within 60 calendar days.
 - c. A field investigator may sometimes need more than the recommended number of days to complete their portion of an investigation. When such need occurs, the field investigator should request an extension from the Sector Supervisor or designated Senior Investigator. The extension approval is updated in the CITS by using the "MBOEXT - # Day Extension Approved by [Sector Supervisor or Senior Investigator]" EVENT code.
2. The initiating field investigator must enter the case into CITS within five (5) working days, after becoming aware of the potential violation. Each Investigator and RE Staff Specialist involved in an investigation must update the CITS for their respective input into the investigation.

D. Additional Information for Cases

1. Initiating field offices should request additional information from other field offices using APHIS Form 7163 (Formerly VS Form 3-59J), "Request for Additional Information," with applicable exhibits attached.
2. The RE Staff will request additional information from initiating field offices through CITS Mail directly to the Senior Investigator with a copy to the Sector Supervisor. The applicable exhibits will be forwarded through normal channels with a hard copy of the CITS Mail attached.

3. Requests for additional information are updated in the CITS with the "SUBST - Submitted Request for Information to ..." code in the EVENTS form.
 - a. Contributing states will use the "SUPSTA - Supplemental Investigation Started" and "SUPSTO - Supplemental Investigation Stopped" codes in the CITS EVENTS form to record their investigation time.
 - b. Contributing states will update the CITS EVENTS form with the "RETST - Returned Requested Information to" code when responding to information requests.
 - c. Contributing states will initiate and complete the supplemental investigation as provided in Paragraph IV.C.
4. If a case is currently pending in the RE Staff or OGC and additional violations are found concerning the same violator, that information should be documented and forwarded to the RE Staff as additional information for the existing case.

EXCEPT when:

- a. The violations are not similar in type to those documented in the existing case file.
- b. A complaint has already been issued and signed by the Administrator for the existing case.

The additional violations should be updated in the CITS EVENTS form with the "ADDVIO - Additional Violation Found" and "SUBRES - Submitted to RES" codes (use both).

E. Veterinary Accreditation Cases

1. Each Veterinary Accreditation (VA) case will be limited to documenting allegations involving one veterinarian only.
 - a. When more than one veterinarian is involved in a violation, copies of the documentation can be used with reference to the case containing the original documents.

- b. Violations of Title 9, Code of Federal Regulations (CFR) Part 161.3 will be separate and apart and will not be combined with other violations of the CFR, or the United States Code (USC).
- 2. VA cases are to be initiated and logged into the CITS by an investigator in the State where the violation was first detected.
- 3. When the investigation is initiated in a State other than the State in which the accredited veterinarian lives and practices, the original (initial investigation) report will be sent directly to the veterinarian's resident State for completion by the resident investigator. The initiating investigator will update this event in the CITS EVENTS form with the "SUBVA - Submitted VA Case For Completion" code and indicate the State to which the case was sent.
 - a. The resident (State) investigator will complete the investigation and submit it in final form to the AVIC for action.
 - b. The resident (State) investigator will NOT return the case to the initiating State for completion, as with other program cases.
- 4. The final action taken in a case must be updated in the CITS in a timely manner to maintain the integrity of the system. If the resident State investigator is not able to ascertain the final action to accurately update the system, RE Staff will update this information when the case is received.
- 5. Combination Violations
 - a. Administrative actions
 - (1) When an accredited veterinarian is involved in both an accreditation violation and another administrative action, e.g., AC or AQ, separate cases must be initiated.
 - (2) Before proceeding with any accreditation action, the RES and OGC should be consulted and apprised of intended action in order not to compromise any formal administrative action.

b. Criminal Actions

- (1) A request for approval must be made to the Department of Justice if the informal conference is to be held prior to any criminal violation case action. This prevents compromising the criminal action by the accreditation proceeding.
- (2) All requests to the Department of Justice for permission to proceed with accreditation action prior to criminal action must be made in writing to the Assistant Deputy Administrator, Regulatory Enforcement, for review by the RES and forwarding to the OGC. If at the informal conference the Part 161 case is resolved, the accredited veterinarian should understand it covers only that case and not the criminal action.

F. Closing Cases

1. At the conclusion of an investigation when no evidence or insufficient evidence is found to support an apparent violation of Federal regulations, the investigation should be closed at the field level with a brief case file documented showing why the case was closed.
 - a. The CITS EVENTS form is updated with the "SUBVIC - Submitted to AVIC", "SUBACS - Submitted to Animal Care Supervisor", "SUBBIO - Submitted to BBEP Program Official" or "SUBOIC - Submitted to Officer in Charge" codes to show that the appropriate program official was consulted before a case is closed.
 - b. Investigations closed for reasons of insufficient evidence or when no violation was evident are updated in the CITS FINAL ACTION form with the codes "IE - Insufficient Evidence" or "NV - No Violation".
2. It is possible that during or after investigations of apparent violations the program official may decide not to proceed with further investigation or prosecution. RE is a service agency, providing investigative and advisory expertise to designated programs.

- a. These cases are updated in the CITS EVENTS form with the "SUBVIC", "SUBACS", "SUBBIO" or "SUBOIC" codes to show that RE gave all available investigative results to the requesting program official prior to closing the case.
 - b. The CITS FINAL ACTION form is updated with the "DD" code to indicate that further investigation or prosecution was "DENIED/DECLINED" by the program official.
3. Cases received by RE Staff may be closed after determination that prosecution is not warranted in the interests of program needs and effectiveness.
 - a. RE Staff should consult with the headquarters' program representative before taking such action.
 - b. RE Staff will update the CITS FINAL ACTION form with the "DD" code to show that prosecution was DENIED/DECLINED and return the case to the submitting program official through the appropriate Sector Supervisor.

V. CASE REPORTS

A. Organization of the Case File

1. A completed case file submitted to the RE Staff at Hyattsville, Maryland, must be assembled in the following order:
 - a. Transmittal letter from (appropriate) program official.
 - b. Investigator's recommendation to program official (optional).
 - c. Investigator's summary report of the completed investigation. This report must be in the basic format as shown in Section VI of this memorandum.
 - d. APHIS Forms 7159, 7012, 7077, 7018, 7091, 7092 (Formerly VS Forms 3-59, 18-12 and 19-7, and PPQ Forms 518, 591, and 592) as appropriate.

- e. Exhibits in numerical order with a brief reference identifying the evidence. An explanation of the exhibit is not needed in this listing.
- f. Place the above items inside the right side of a RE investigation file folder. Attach at the top with a standard two-hole clip, taking care not to punch holes through important information (original set fastened together on top and copy or copies fastened in sets under the original).
 - (1) The original and one copy of the file are needed for administrative cases.
 - (2) If there is reason to believe the case may be prosecuted criminally, the RE Staff will make an additional copy.
- g. When sending additional information to the RE Staff for use with a previously submitted case, send the original and one copy.
- h. Staple a current CITS Case Report (CITS140) inside the left side of file folder.
- i. Label the front cover of the case file folder:

Regulatory Enforcement Staff
USDA, APHIS, REAC
Federal Building, Room 564
Hyattsville, MD 20782
- j. Label the identifying side tab of the folder with the case number and the primary violator's name, in that order.

B. Case Submission

- 1. Completed cases and requests for summary suspensions must first be submitted to the designated program official for review and recommendation, as follows:
 - a. Veterinary Services (VS)

- (1) Completed investigative case files involving Veterinary Services to the AVIC where the case was initiated, except Veterinary Accreditation cases which are submitted to the AVIC in the State where the accredited veterinarian resides.
- (2) Completed investigative case files submitted to the AVIC are updated in the CITS EVENTS form with the "SUBVIC" code.

b. Animal Care (AC)

- (1) Animal Welfare (AW) and Horse Protection (HP) cases, and requests for summary suspensions to the resident AC Sector Supervisor.
- (2) Cases submitted to AC program officials are updated in the CITS EVENTS form with the "SUBACS" code.

c. Biotechnology, Biologics and Environmental Protection (BBEP)

- (1) Biotechnology (BI) cases to the Deputy Director
Biotechnology Permits

Deputy Director Biotechnology Permits
USDA, APHIS, BBEP
6505 Belcrest Road
Room 842, Federal Building
Hyattsville, MD 20782

- (2) Veterinary Biologics (VB) cases to the Director of Field
Operations

Director of Field Operations
USDA, APHIS, BBEP-VBFO
223 South Walnut Avenue
Ames, IA 50010

- (3) Cases submitted to BBEP program officials are updated in the CITS EVENTS form with the "SUBBIO" code.
 - d. Plant Protection and Quarantine (PQ) cases to the resident USDA, PPQ, Officer in Charge, where the case was initiated, updated in the CITS EVENTS form with the "SUBOIC" code.
- 2. All cases accompanied by written recommendation for action from the program official, are then forwarded to the RE Staff:

Director
Regulatory Enforcement Staff
USDA, APHIS, REAC
Room 564, Federal Building
Hyattsville, MD 20782

C. Action on Violation Cases by the RE Staff

- 1. The RE Staff will review the violation case file for completeness and accuracy.
 - a. Cases which are complete and properly prepared will be processed for appropriate action.
 - b. Cases which are not complete or properly prepared will be returned to the appropriate RE Sector Supervisor, for appropriate follow up.
 - c. All Veterinary Accreditation cases (open and closed) received at RES will be updated in CITS and forwarded to the designated veterinary accreditation person in VS for review.
 - d. Requests for summary suspension will be reviewed for merit and processed as priority items.

VI. BASIC FORMAT - SUMMARY REPORT OF THE VIOLATION CASE REPORT

A. Subject Line

1. Cite the CFR Part(s) and/or U.S.C. violated, such as violations of 9 CFR, Parts 71 and 78; 18 U.S.C. 1001 and 1018, etc.
2. Cite the initiating field office case number using the format of the Case Numbering System described in Section V. of this memorandum.

B. First Paragraph

1. Identify the basic regulations and laws violated. Separately show violator(s) by name and address. Violator names must be underlined or in capital letters, and in boldface type if possible.

2. Example:

A report of apparent violations of 9 CFR, Part __, (d), 3, and 18 U.S.C. 1001 and 1018, involving the following named violators is transmitted for your attention:

John R. Noname, Houston, TX;

Rodney Dugood, Inc., Yugo, TX;

RUFF JOHNSON, dba JOHNSON'S KENNEL, Adalph, NM

C. Second Paragraph

1. Provide a brief summary of the violation. Show the dates of violations and what was done by whom and where. If movement occurred, show origin and destination. Identify by date and occurrence, the specific regulations violated. Explain the specific reasons the occurrence was in violation. This may be done in paragraph or chart form or in a combination of both.

2. Examples:

a. Movement:

This report shows that on [when], [who] shipped [what] from [where] to [where].

This shipment was in apparent violation of [regulations, sections, subsections, or U.S.C. sections] because [reason].

b. No Movement: (Most Swine Health Protection, Horse Protection and Animal Welfare Act premises violation cases.)

This report shows that on [when], at [where], [who] violated [what] because [reason].

3. Multiple Violations

This report shows that on [when], [who] shipped [what] from [where] to [where].

This shipment was in apparent violation of [what] because [reason].

This shipment was also in violation of [what] because [reason].

or,

This report shows that on [when], at [where], [who] violated [what] because [reason].

These premises were also in violation of [what] because [reason].

D. Body of the Report

1. Identify and explain in paragraph form the pertinent exhibits and statements included with the report. This should be organized in a logical order so the reader can understand the flow of events and how the evidence supports the allegations. Be specific, accurate and complete.

2. Examples:

a. Animal Welfare - Standards violations by a licensee/registrant:

Preferred format:

[*Licensee*] is a licensed dealer under the Animal Welfare (AWA), [*license number*]. (See Exhibit 1) [*Licensee*] has held this license since [*when*].

On [*when*], [*licensee*] was inspected by [*inspector*] who documented the following violations of the AWA (See Exhibit 2):

On [*when*], [*inspector*] took photographs of said violations, accurately depicting conditions at this facility. (See Exhibit 3)

or,

Exhibit 1 is APHIS Form 7003 (Formerly VS Form 18-3) showing the current status of licensee.

Exhibit 2 is APHIS Form 7008 (Formerly VS Form 18-8) showing inspection of the subject premise by [*inspector*] on [*when*], documenting the following violations:

Exhibit 3 is photographs of the subject premise taken by [*who*] on [*when*] showing the following violations: ...

b. Animal Quarantine - Prohibited interstate movement of cattle:

Preferred format:

On [*when*], a market reactor was disclosed at [*where*] (See Exhibit 1). The cow was listed as eartag no. 93123456, reactor tag no. RX7890, 3 1/2 years old, tube no. 45. This cow was purchased by [*who*] on [*when*] and consigned to [*where*]. (See Exhibits 2, 3).

On [*when*], [*who*] provided an affidavit explaining that he/she decided not to take the cow to slaughter after leaving the

stockyard, but instead took her home as a breeding animal (See Exhibit 4)....etc.

or,

Exhibit 1 is APHIS Form ____ (Formerly VS Form 4-54) Brucellosis Test Chart, dated [when], completed at [where] listing a cow identified by eartag no. 93123456, tube no. 45, age 3 1/2 years classified as a brucellosis "Reactor."

Exhibit 2 is sales invoice [no.] showing sale of the subject cow to [who] on [when].

Exhibit 3 is APHIS Form 7027 (Formerly VS Form 1-27) completed by Dr. MARKETVET on [when] which lists reactor cow 93123456, tagged with reactor tag no. RX7890 as consigned to [who, address].

Exhibit 4 is an affidavit dated [when] from [who] which states that he/she decided not to take the cow to slaughter after all once he left [where] on [when], but instead took her home to [where] to use for breeding....etc.

E. Investigative Evidence

1. Each field office initiating and contributing to an investigative case file will provide complete and accurate evidence which will support the charges.

a. Documentary evidence obtained should include, but is not limited to:

- | | |
|----------------------------|-------------------|
| - livestock market records | - invoices |
| - program records | - test records |
| - health certificates | - permits |
| - cancelled checks | - warning notices |
| - inspection records | - affidavits |

Original documents should be obtained whenever possible. Copies of documents should be legible. RE Staff must be

notified when subpoenas are necessary to obtain records under the AWA, e.g., bank records, American Kennel Club records.

b. Physical evidence obtained include, but is not limited to:

- | | |
|---------------------------------|-----------------|
| - animal identification tags | - blood samples |
| - vaccine bottles, labels, etc. | - seals |
| - tissue samples | - photographs |

Chain of custody must be preserved for all physical evidence.

- c. Photographic evidence - Prints, not slides, should accompany the case file unless otherwise requested. Negatives should be securely maintained by the investigator to insure integrity of custody.
- d. Proof of purchase, such as cancelled checks, invoices and receipts should always be provided in cases involving the purchase, sale or movement of newly purchased/sold animals.
- e. All evidence should be identified by whom, when, and where obtained in such a manner as to not deface the evidence.

2. Affidavits (Sworn/Affirmed statements)

During the investigations, the investigator should attempt to document each statement with an affidavit (APHIS Form 7162, formerly VS Form 3-59G).

- a. Affidavits will be completed in accordance with VS Memorandum No. 576.4.
- b. Affidavits should be obtained from all interviewees, including the alleged violator making statements pertinent to investigations.

3. The investigator preparing the final case report should affix exhibit identification to exhibits in such a manner that will not deface or destroy the exhibit. Other investigators furnishing information about the case should not permanently identify exhibits.

F. History

1. Cite and explain the previous 5-year history of Decisions or Warnings for each violator and cite their years of experience in the activity or business involved. Cite all case numbers. This should be part of the investigative file and be shown after the Evidence Section and before the Conclusion.
2. The initiating investigator is responsible for obtaining prior history information regarding each violator through CITS, RES, or program officials.

G. Conclusion

Identify willfulness, intent to violate, flagrancy, damage and negative impact to the program caused by the violator. Do not include personal opinions or recommendations in the investigative report. Opinions and/or recommendations should be in a separate cover letter.

H. List of Exhibits

Number and identify each exhibit and list in logical order by title and date.

I. Violation Summary Form

Include summary of violation form, i.e., 7012 and 7159, prepared by the investigator. The summary form should follow the list of exhibits and be placed in front of the numbered documents provided as supporting evidence.

VII. DISTRIBUTION

A. Completed Case File

1. The initiating field Investigator will prepare the case report for submission to the designated program official as shown in Section V.A. of this memorandum.

2. This program official should forward the case file to the RE staff whenever he/she recommends formal prosecution.
3. Copies of case reports will be made available to each contributing field and Sector Office upon written request to the initiating field office.

VIII. COMBINATION VIOLATIONS

- A. Cases involving administrative, civil (State) or criminal charges may be handled concurrently only if each prosecutive entity is kept apprised of the other's actions. In these instances, the appropriate U.S. Attorney is notified by OGC.
- B. When one or more violation cases are developed which may be directly related to a pending or imminent criminal violation case (for example: willful blood fraud), all the cases should reference each other and no case should be resolved independently or prior to the criminal case without first receiving permission from RE Staff.

IX. RETENTION AND DISPOSAL OF CASE FILES

- A. APHIS is authorized to maintain investigative files under 7 U.S.C. 2131 et seq., 15 U.S.C. 1821 et seq., and 21 U.S.C. 101-105, 111-134. The National Archives records retention system has jurisdiction over records retention and disposal. Unless approved by National Archives and Records System (NARS), no other records retention and disposal schedule may be followed. Investigative case files and related correspondence are retained and disposed of as shown in Attachment A.
- B. The office of primary responsibility is defined as the office which has final possession of the completed case file.



Ron D. Stanley
Assistant Deputy Administrator
Regulatory Enforcement

Attachment A

Program Investigations and Violations (PIV)	Office of Primary Responsibility	All Other Offices
--	--	-------------------------

*(Destroy # yrs after case
is closed)*

PIV 11 Animal Welfare

11-1	General correspondence	3	2
11-1	Insufficient or no evidence of violation disclosed	[10] ¹	[5] ²
11-4	Precedent setting cases including court cases	7	2
11-4	Routine cases	5	2

PIV 11 Horse Protection

11-2	General correspondence	3	2
11-2	Insufficient or no evidence of violation disclosed	1	when closed
11-4	Precedent setting cases including court cases	7	2
11-4	Routine cases	5	2

PIV 12 Veterinary Accreditation

12	General correspondence	3	2
12	Investigations and other records dealing with loss of accreditation	10	5
12	Precedent setting cases including court cases	PERMANENT ³	2
12	Routine cases	[10] ⁴	2

PIV 13 Animal Quarantine

13-1	General correspondence	3	2
13-1	Insufficient or no evidence of violation disclosed	1	when closed
13-2	Precedent setting cases including court cases	7	2
13-2	Routine cases	5	2

Program Investigations and Violations (PIV)	Office of Primary Responsibility	All Other Offices
--	--	-------------------------

*(Destroy # yrs after case
is closed)*

PIV 14 Veterinary Biologics

14	General correspondence	3	2
14	Precedent setting cases including court cases	PERMANENT] ⁵	2
14	Routine cases	[10] ⁶	2

PIV 15 Plant Protection and Quarantine

15	General correspondence	3	2
15	Precedent setting cases including court cases	[PERMANENT] ⁷	2
15	Routine cases	[10] ⁸	2

1. Presently, the official NARS calls for a ten year retention of this class of file. Since there does not appear to be a valid reason for keeping these cases for this length of time, this item is in the process of being changed to one year in the schedule.

2. Presently, the official NARS calls for a five year retention of this class of file. Since there does not appear to be a valid reason for keeping these cases for this length of time, this item is in the process of being changed to allow non-primary offices to dispose of these files at the time the cases are closed.

3. **PERMANENT** case file retention: Transfer to Federal Archives Records Center (FARC) after case is closed. Offer to NARS 15 years after case is closed.

4. Presently, the official NARS calls for a ten year retention of this class of file. Since there does not appear to be a valid reason for keeping these cases for this length of time, this item is in the process of being changed to five years in the schedule.

5. Presently, the official NARS calls for **PERMANENT** retention of this class of file. Since there does not appear to be a valid reason for keeping these cases for this length of time, this item is in the process of being changed to seven years (by the OPR), with 25 year retention by the OGC.

6. See Note 4.

7. See Note 5.

8. See Note 4.



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Federal Bldg.
Hyattsville, MD
20782

APR 8 : 1992

Subject: Staff Procedures for Requesting Additional
Information and Returning Investigative Reports

To: All Regulatory Enforcement Personnel

I. PURPOSE

To establish procedures that assign responsibility and accountability within Regulatory Enforcement for the Staff's collecting of additional information and the returning of investigative reports to program officials.

This policy expands upon the procedures outlined in the Regulatory Enforcement memorandum of September 9, 1991 on Procedures for Documenting and Submitting Investigative Case Reports.

II. GENERAL

The Regulatory Enforcement Staff routinely requests additional information to supplement violation cases. The requests may be for evidence found lacking in the original submission, to clarify evidence already provided, or to update the status since the original case was submitted. The additional information requests involve a wide range of program officials as well as Regulatory Enforcement field operations. This policy will establish uniform procedures that can be applied across program lines.

The original investigative files that do not contain sufficient evidence for prosecution or those where a decision has been made to decline prosecution must be returned to the original program official that submitted the case. This policy provides a uniform mechanism for Regulatory Enforcement Staff to return cases to the program through our field operations to ensure the program officials receive a satisfactory explanation why the case was not prosecuted.



III. PROCEDURES

Additional Information for Cases at RE Staff or OGC

Requests for additional information pertaining to cases under review at the RE Staff or the Office of the General Counsel will be categorized as a minor or major request and processed as follows:

Minor Request Includes requests for evidence that is readily available from the investigator or the program official. These requests do not require any additional investigative work. Examples include requests for documents on file, such as an inspection report from the Animal Care Sector office or a manifest from a PPQ port office.

When ever possible, minor requests will be handled with a phone call to the person with access to the information requested. The Staff Specialist will make a note of the request in the case folder and process the information upon receipt. No other documentation is required other than updating the CITS.

Major Request This includes any requests that require investigative work such as interviews, taking sworn statements, and obtaining records or other evidence not readily available.

The Staff Specialist will process all major requests through CITS Mail. The request will be directed to the Senior Investigator for the state where the case was initiated with a copy to the Sector Supervisor. A hard copy of the CITS Mail will be mailed to those individuals that do not have access to CITS.

The RE Staff may request additional information for cases that were submitted for prosecution by a program without RE involvement. This is a common occurrence with PPQ cases submitted directly from the Officer in Charge at the ports. In these cases, the RE Staff Specialist will send a hard copy of the CITS Mail printout along with case documents to the RE investigator. The RE investigator will work directly with the PPQ Officer that submitted the case in collecting the additional information.

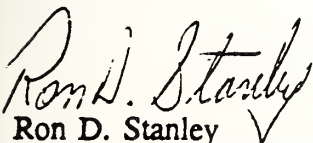
Response to a major request will be through CITS Mail. If documents or other physical evidence is obtained, it will be submitted to the Specialist with a copy of the CITS Mail response printout included. All major requests for information and responses will be updated in CITS by the individual taking the action, in accordance with established policy.

Returning Closed Cases to the Program Official

Cases closed at the RE Staff or the OGC will be returned to the submitting program official through the Sector Supervisor for all programs. The transmittal letter for each case will indicate the reason for closure and enclose any written explanation from the OGC. If the program official does not concur with the closure recommendation, they may request the investigation be reopened to collect additional evidence or re-submit the case with a written request for re-evaluation by the RE Staff.

The Sector Supervisor will have the choice of forwarding the case to the program official by mail with a follow-up phone call, delivering the case in person with an explanation, or assigning an investigator to meet with the program officials and discuss the case. This discussion with the program should include recommendations on improving program or investigative activities in order to improve compliance and/or ensure successful prosecution in the future.

CITS will be updated with the closure information at the RE Staff. If the investigation is reopened or an appeal to reconsider is initiated by the program official, the Sector office or investigator working with the program official is responsible for updating CITS.



Ron D. Stanley
Assistant Deputy Administrator
Regulatory Enforcement



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject: Animal Care Stipulation Procedures

Date: FEB 20 1992

To: REAC Management Team

Enclosed you will find a summary report of the stipulation process and some indication of how well it is working.

I believe that the indications are such that this tool is going to be helpful in gaining compliance in many cases. However, for any system to be effective, we must have uniformity in application. It appears that only two of the five Sectors have used the process with any regularity.

I would like to see all Sectors participating fully so that we will be able to have a meaningful discussion at the REAC Management Team (RMT) meeting.

Alan Christian will provide this type of status report to the RMT on a regular basis as we had previously discussed.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

Enclosure



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Federal Bldg.
Hyattsville, MD
20782

Subject: Animal Care Stipulation
(Summary Update)

Date: FEB 7 1992

To : REAC Management Team

The Animal Care stipulation procedures have been in place for approximately 4 months with the first stipulation letter issued on October 1, 1991. Since that date, the stipulation has been offered to 58 violators as an opportunity to resolve cases informally at the Agency level. Of the 58 stipulation letters issued, 35 violators agreed to the stipulation and paid civil penalties, 10 did not return the stipulation and are being submitted for formal prosecution, and the remaining cases are still pending. The stipulation process seems to be working rather well at this early stage, although we will not be able to predict the settlement success rate for some time.

CITS Reports

The above activities are summarized in the enclosed CITS reports as follows:

1. The first report, with 58 records selected, shows the code ACSTIP under the Event Column and indicates the date that stipulation letters were issued from the Animal Care Sector Office. An amount in the Fine Column indicates a fine was paid and the case closed.
2. The second report, listing 49 records, shows the code DEMVAR under Event. This code indicates the stipulation or demand letter was received by the alleged violator on the date shown. This is the date used to calculate those that have failed to settle in the 30-day time frame.
3. The third report, listing 35 records, shows those cases where the violators have agreed to the stipulation and paid civil penalties.
4. The last report is a list of violators that received the stipulation letter, but have not responded in the 30-day time period. This report is run twice a month on the 1st and 15th, and distributed to those sector offices affected.

These current reports are the result of informal queries run by the RE Staff. Please review the information provided and give me some feedback as to what you would like to see in a Stipulation Report. Once the stipulation data entry screen is developed for the sectors' use, we plan to have stipulation reports available to the sector offices that can be run at any time.



Staff Activities

The RE Staff recently received the first few unpaid stipulations for administrative prosecution. Our ability to promptly and successfully pursue these initial cases with the Office of the General Counsel is vital to the success of the stipulation. We can improve our chance for successful prosecution by ensuring that thorough field investigations are conducted and well-documented case reports are submitted. This is important, because the violations suitable for stipulation are not as flagrant as those submitted directly for prosecution. The stipulation cases must clearly document the violation if we are to expect quick action.

Occasionally, the Staff receives a signed stipulation form and check prior to the sector office submitting the letter and return receipt card. In these cases, we hold the check and stipulation agreement pending receipt of the copies from the sector office. This time lag will be taken care of with the data entry into CITS at the sector office.

In order to consolidate the paper flow from the sector offices to Staff, please submit the stipulation letter and return receipt card together. The current practice of submitting these items separately, causes extra handling, reviewing, and mailing at both the sector and Staff level that is not necessary. The return receipt card initiates action at Staff and starts the clock for the response period.

We have, also, received unsigned stipulation agreements with full payment and signed stipulation agreements with partial payment. In each case, the stipulation form and partial payment checks are returned to the alleged violator with an additional 20 days provided for a return response, before formal action is initiated. These individuals do not appear on the list of violators failing to respond until the additional time has elapsed. We have, also, extended the response period in other specific situations where appropriate. In each case, the sector supervisors are notified with a copy of the extension letter.

Many individuals respond in writing to the allegations contained in the stipulation offer. The RE Staff is forwarding a copy of the response to the sector office upon closing of the case. Some of the responses raise allegations regarding our actions and/or deny that violations occurred. These responses represent possible defenses the respondents may raise in an administrative hearing. We should be analyzing these responses to identify areas in which we can improve program delivery or the collection of evidence with the goal of building solid violation cases.

In one recent example, a violator received a stipulation with allegations that he was dealing without a license on two separate occasions. The violator's response questioned what he specifically had done to cause the violation. Based upon this response, we might want to

REAC Management Team

include more detail in our description on the stipulation form. In the example case, we could state "operating as a dealer without a valid license in the sale of (name animal) on (date)."

I hope some of this information is helpful as we fine tune the stipulation procedures. If you have any questions or suggestions, please bring them to the REAC Management Team Meeting scheduled for March. I have requested a half hour on the agenda for discussion of stipulations.

A handwritten signature in black ink, appearing to read "Alan R. Christian". The signature is fluid and cursive, with a long horizontal stroke at the end.

Alan R. Christian
Director
Regulatory Enforcement Staff
Regulatory Enforcement
and Animal Care

Enclosures

05-FEB-92

ALL ANIMAL CARE STIPULATIONS LETTERS SENT

CASE ID	VIOLATOR NAME	EVENT	DATE	FI	FINE	AMOUNT
MO91044	KLINETOBE BERTHA	ACSTIP	01-OCT-91	AS		250
AR92014	JONES BARBARA	ACSTIP	02-OCT-91	AS		250
AR92013	HENRY JERRY AND JULIE	ACSTIP	02-OCT-91	AS		250
MO91045	SCHRAGE DONALD AND MARY RUTH	ACSTIP	03-OCT-91	AS		1250
KS92007	WERNER JAMES AND CYNTHIA	ACSTIP	07-OCT-91	AS		100
OK92008	ATCHINSON DORIS	ACSTIP	11-OCT-91			
CA92040	BENTLEY RICHARD E	ACSTIP	24-OCT-91	AS		300
CA92031	BIOMERICA	ACSTIP	24-OCT-91	AS		100
NM91009	HURFORD JAMES AND REBECCA	ACSTIP	24-OCT-91	AS		250
HI92018	FUKUDA KATSUYUKI	ACSTIP	24-OCT-91	AS		700
CA90095	MEARS ALVIN	ACSTIP	24-OCT-91	AS		250
OR92017	WOOD GARY DVM	ACSTIP	24-OCT-91	AS		100
CO91023	MC CLURG RUBY M	ACSTIP	24-OCT-91	AS		250
NM92005	EVANS AUDRILLA	ACSTIP	24-OCT-91	AS		500
KS92006	GROSSE BILL AND SHIRLEY	ACSTIP	28-OCT-91	AS		100
MO92017	HANEY THOMAS	ACSTIP	29-OCT-91			
CA92030	PHARMINGEN	ACSTIP	31-OCT-91	AS		250
CA92033	LOS ANGELES ZOO	ACSTIP	01-NOV-91	AS		500
WA91014	CALDER C VAL	ACSTIP	04-NOV-91	AS		500
OK92005	OWENS RON AND SHELIA	ACSTIP	06-NOV-91			
AR91067	BLOUNT DONALD	ACSTIP	06-NOV-91			
KS92005	MCCALL KATHY	ACSTIP	06-NOV-91			
MO92016	SCOTT JIM	ACSTIP	06-NOV-91	AS		500
OK91037	DEPEW EDNA	ACSTIP	07-NOV-91	AS		250
PA91061	KANAGY DAVID B	ACSTIP	13-NOV-91			
NV91007	BEROSINI OTTO	ACSTIP	19-NOV-91			
CA92041	CORTEX PHARMACEUTICALS INC	ACSTIP	19-NOV-91	AS		200
CA92034	SONHEIM CAROL	ACSTIP	19-NOV-91	AS		100
MI91056	WEINKE ARTHUR	ACSTIP	25-NOV-91			
PA92002	VANDERWENDE BERNICE DEBRA	ACSTIP	25-NOV-91	AS		250
CA92042	THACKER DAVID	ACSTIP	29-NOV-91			
LA92005	PROVOST JAMES AND BETTY	ACSTIP	02-DEC-91	AS		250
MO92001	ANDERSON DAVID L AND MARYANN	ACSTIP	02-DEC-91			
OK91063	ARMSTRONG JIM	ACSTIP	04-DEC-91			
MO92030	GINGERICH DAVID AND EDNA	ACSTIP	04-DEC-91	AS		450
MO92024	MCMILLAN LINDA	ACSTIP	05-DEC-91	AS		250
NC92001	HARTSHORN KENNETH E	ACSTIP	05-DEC-91			
MO91077	LEWIS SUE	ACSTIP	05-DEC-91	AS		500
KS92011	JONES TAVA	ACSTIP	05-DEC-91	AS		500
MO92022	YOUNG JANET	ACSTIP	05-DEC-91			
OK92014	STIPES VAN AND WANDA	ACSTIP	05-DEC-91	AS		250
MI91059	BAXTER ANTHONY	ACSTIP	05-DEC-91			
KS92012	MOORE LLYOD AND MARIE	ACSTIP	06-DEC-91	AS		300
TX92021	MCLEMORE JIM AND KATHY	**ACSTIP	06-DEC-91			
TX92021	BOZEMAN GERALD	ACSTIP	06-DEC-91			
MO92029	KNIERIM JANICE	**ACSTIP	09-DEC-91			
MO92029	BURNETT RHONDA	ACSTIP	09-DEC-91			
WA92021	BEEBE LLOYD	ACSTIP	13-DEC-91	AS		200
OR92021	ELLIOT NANCY	ACSTIP	13-DEC-91	AS		200
NE92012	ANDERSON ROLAND AND THERESA	ACSTIP	19-DEC-91	AS		100
MN92011	RATHJEN GARY	ACSTIP	19-DEC-91			
KS91040	O SHEA NINA	ACSTIP	23-DEC-91	AS		300
AR92023	TAYLOR JAMES	ACSTIP	26-DEC-91	AS		200
MO92031	RUSSELL GEORGE L	ACSTIP	26-DEC-91	AS		350
OK91046	MATHIS RUSS	ACSTIP	26-DEC-91			
MO92008	NELSON TOM	ACSTIP	27-DEC-91			
MO92032	HOLTKAMP JAMES D	ACSTIP	27-DEC-91			
MO92002	JONES JOHN	ACSTIP	27-DEC-91			

PR92015 MUNICIPALITY OF BAYAMON
AR91059 BAIRD C C

ACSTIP 06-JAN-92
ACSTIP 24-JAN-92

58 records selected.

** MORE THAN 1 VIOLATOR INVOLVED IN CASE

05-FEB-92

ANIMAL CARE STIPULATIONS RECEIVED

CASE ID	VIOLATOR NAME	EVENT	DATE	FI	FINE AMOUNT
MO91044	KLINETOBE BERTHA	DEM250	05-OCT-91	AS	250
AR92014	JONES BARBARA	DEM250	07-OCT-91	AS	250
AR92013	HENRY JERRY AND JULIE	DEM250	10-OCT-91	AS	250
OK92008	ATCHINSON DORIS	DEM250	15-OCT-91		
CA92031	BIOMERICA	DEM100	30-OCT-91	AS	100
CA90095	MEARS ALVIN	DEM250	30-OCT-91	AS	250
CO91023	MC CLURG RUBY M	DEM250	31-OCT-91	AS	250
OR92017	WOOD GARY DVM	DEM100	01-NOV-91	AS	100
MO92017	HANEY THOMAS	DEM250	01-NOV-91		
NM92005	EVANS AUDRILLA	DEM500	01-NOV-91	AS	500
NM91009	HURFORD JAMES AND REBECCA	DEM250	04-NOV-91	AS	250
WA91014	CALDER C VAL	DEM500	04-NOV-91	AS	500
CA92030	PHARMINGEN	DEM250	04-NOV-91	AS	250
HI92018	FUKUDA KATSUYUKI	DEMVAR	05-NOV-91	AS	700
CA92033	LOS ANGELES ZOO	DEM500	06-NOV-91	AS	500
KS92005	MCCALL KATHY	DEM250	12-NOV-91		
MO92016	SCOTT JIM	DEM500	12-NOV-91	AS	500
OK92005	OWENS RON AND SHELIA	DEM500	12-NOV-91		
KS92006	GROSSE BILL AND SHIRLEY	DEM100	15-NOV-91	AS	100
PA91061	KANAGY DAVID B	DEMVAR	18-NOV-91		
AR92015	CROSSLAND ZOO	DEMVAR	25-NOV-91	AS	200
NV91007	BEROSINI OTTO	DEMVAR	26-NOV-91		
CA92041	CORTEX PHARMACEUTICALS INC	DEMVAR	26-NOV-91	AS	200
MI91056	WEINKE ARTHUR	DEM250	02-DEC-91		
PA92002	VANDERWENDE BERNICE DEBRA	DEM250	04-DEC-91	AS	250
CA92042	THACKER DAVID	DEM250	06-DEC-91		
MO92024	MCMILLAN LINDA	DEM250	07-DEC-91	AS	250
MO92022	YOUNG JANET	DEMVAR	07-DEC-91		
KS92011	JONES TAVA	DEM500	07-DEC-91	AS	500
MO91077	LEWIS SUE	DEM500	09-DEC-91	AS	500
KS92012	MOORE LLYOD AND MARIE	DEMVAR	09-DEC-91	AS	300
TX92021	MCLEMORE JIM AND KATHY	**DEM500	09-DEC-91		
TX92021	BOZEMAN GERALD	DEM500	09-DEC-91		
NC92001	HARTSHORN KENNETH E	DEMVAR	09-DEC-91		
OK92014	STIPES VAN AND WANDA	DEM250	13-DEC-91	AS	250
CA92040	BENTLEY RICHARD E	DEMVAR	13-DEC-91	AS	300
MO92029	KNIERIM JANICE	**DEMVAR	16-DEC-91		
MO92029	BURNETT RHONDA	DEMVAR	16-DEC-91		
MO92030	GINGERICH DAVID AND EDNA	DEMVAR	16-DEC-91	AS	450
LA92005	PROVOST JAMES AND BETTY	DEM250	19-DEC-91	AS	250
OR92021	ELLIOT NANCY	DEMVAR	19-DEC-91	AS	200
WA92021	BEEBE LLOYD	DEMVAR	19-DEC-91	AS	200
NE92012	ANDERSON ROLAND AND THERESA	DEM100	26-DEC-91	AS	100
KS91040	O SHEA NINA	DEMVAR	27-DEC-91	AS	300
OK91046	MATHIS RUSS	DEM500	30-DEC-91		
MO92002	JONES JOHN	DEMVAR	30-DEC-91		
MO92008	NELSON TOM	DEM750	30-DEC-91		
MO92032	HOLTKAMP JAMES D	DEM250	31-DEC-91		
IN92011	RATHJEN GARY	DEM250	02-JAN-92		
MO92001	ANDERSON DAVID L AND MARYANN	DEM500	03-JAN-92		
OR92023	TAYLOR JAMES	DEMVAR	07-JAN-92	AS	200

9 records selected.

* MORE THAN 1 VIOLATOR INVOLVED IN CASE

05-FEB-92

CLOSED ANIMAL CARE STIPULATIONS

CASE ID	PRIMARY VIOLATOR	FINAL ACT	FINE AMOUNT
MO91044	KLINETOBE BERTHA	08-OCT-91	250
AR92014	JONES BARBARA	17-OCT-91	250
AR92013	HENRY JERRY AND JULIE	21-OCT-91	250
KS92007	WERNER JAMES AND CYNTHIA	24-OCT-91	100
CO91023	MC CLURG RUBY M	31-OCT-91	250
MO91045	SCHRAGE DONALD AND MARY RUTH	01-NOV-91	1250
CA90095	MEARS ALVIN	05-NOV-91	250
CA92030	PHARMINGEN	08-NOV-91	250
OR92017	WOOD GARY DVM	08-NOV-91	100
CA92031	BIOMERICA	08-NOV-91	100
NM91009	HURFORD JAMES AND REBECCA	11-NOV-91	250
WA91014	CALDER C VAL	13-NOV-91	500
OK91037	DEPEW EDNA	14-NOV-91	250
HI92018	FUKUDA KATSUYUKI	21-NOV-91	700
CA92033	LOS ANGELES ZOO	26-NOV-91	500
CA92034	SONHEIM CAROL	27-NOV-91	100
KS92006	GROSSE BILL AND SHIRLEY	27-NOV-91	100
CA92041	CORTEX PHARMACEUTICALS INC	05-DEC-91	200
PA92002	VANDERWENDE BERNICE DEBRA	11-DEC-91	250
MO92024	MCMILLAN LINDA	23-DEC-91	250
MO91077	LEWIS SUE	23-DEC-91	500
KS92011	JONES TAVA	23-DEC-91	500
KS92012	MOORE LLYOD AND MARIE	26-DEC-91	300
WA92021	BEEBE LLOYD	27-DEC-91	200
CA92040	BENTLEY RICHARD E	30-DEC-91	300
MO92030	GINGERICH DAVID AND EDNA	31-DEC-91	450
NE92012	ANDERSON ROLAND AND THERESA	01-JAN-92	100
OR92021	ELLIOT NANCY	02-JAN-92	200
LA92005	PROVOST JAMES AND BETTY	06-JAN-92	250
NM92005	EVANS AUDRILLA	06-JAN-92	500
KS91040	O SHEA NINA	07-JAN-92	300
OK92014	STIPES VAN AND WANDA	11-JAN-92	250
MO92031	RUSSELL GEORGE L	13-JAN-92	350
AR92023	TAYLOR JAMES	21-JAN-92	200
MO92016	SCOTT JIM	04-FEB-92	500

35 records selected.

UNITED STATES DEPARTMENT OF AGRICULTURE
Compliance Investigation Tracking System

AW Report of Demand Letters Sent
(OPEN Cases - Not Yet Referred to OGC)

14 Cases - Over 30 Days Since Demand Letter Sent

Case Id	PC	Primary Violator	Event	Date Sent	Reviewer
OK92008	AW	ATCHINSON DORIS	DEM250	15-OCT-91	CHRISTEN
MO92017	AW	HANEY THOMAS	DEM250	01-NOV-91	CHRISTEN
KS92005	AW	MCCALL KATHY	DEM250	12-NOV-91	CHRISTEN
OK92005	AW	OWENS RON AND SHELIA	DEM500	12-NOV-91	CHRISTEN
NV91007	AW	BEROSINI OTTO	DEMVAR	26-NOV-91	DEHAVEN
CA92042	AW	THACKER DAVID	DEM250	06-DEC-91	DEHAVEN
MO92022	AW	YOUNG JANET	DEMVAR	07-DEC-91	CHRISTENS
MO92021	AW	MARTINSON KENNETH E	DEMVAR	09 DEC 91	CHRISTENS
TX92021	AW	MCLEMORE JIM AND KATHY	DEM500	09-DEC-91	CHRISTENS
MO92023	AW	MARTINSON KENNETH E	DEMVAR	16 DEC 91	CHRISTENS
MO92002	AW	JONES JOHN	DEMVAR	30-DEC-91	CHRISTENS
MO92003	AW	MARTINSON KENNETH E	DEMVAR	30 DEC 91	CHRISTENS
MO92008	AW	NELSON TOM	DEM750	30-DEC-91	CHRISTENS
MO92009	AW	MARTINSON KENNETH E	DEMVAR	01 DEC 91	CHRISTENS

***** End of Report *****



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Federal Bldg.
Hyattsville, MD
20782

Subject: Horse Protection Penalties

Date: FEB 10 1992

To: REAC Management Team

This memo cancels the REAC memo dated January 21, 1992, on the same subject and brings REAC policy in agreement with the Office of the General Counsel's existing settlement offers. This establishes REAC policy concerning penalty recommendations and settlements for violations of the Horse Protection Act. **This policy covers all violations which occurred after January 1, 1991.**

The recommended penalty for first-time violators is a \$1000.00 civil penalty and 1 year disqualification from showing. The 1 year disqualification is mandatory and not negotiable during settlement.

Recommendations for violators with a prior history will be determined based upon the circumstances of the prior violation(s) and how recent they occurred. Under no circumstances will the recommended or settlement penalty provide for less than 1 year disqualification.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

Enclosure





United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Federal Bldg.
Hyattsville, MD
20782

1 OF 2

Subject: Settlement of AWA and HPA Cases

Date: FEB 3 1992

To: REAC Management Team
Regulatory Enforcement Staff

The following establishes REAC policy concerning the settlement of Animal Care and Horse Protection violations. This policy is necessary to ensure that penalty settlements are consistent and in agreement with Animal Care's penalty guidelines. This policy will also help in achieving uniformity in the processing and settlement of cases, where a stipulation was offered, but did not resolve the violations.

The Regulatory Enforcement Staff Specialist will be the contact point for settlement offers. The specialist is in the best position to evaluate the offer based upon the investigative file and program guidelines. All proposed settlements will be directed to the attention of the specialist who originally reviewed the case file. If that individual is not available, the specialist with the Animal Care program responsibility or the Director will be responsible for evaluating the settlement offer.

A settlement offer approved by the specialist must be initialed by the Deputy or Associate Deputy for concurrence. The specialist will relay our acceptance or declination of the offer to the Office of the General Counsel, explaining the basis for our decision.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

Enclosure



SETTLEMENT APPROVAL			
Case Number		Date	
Violator			
OGC Attorney			
OGC Settlement Offer			
Discussion			
Specialist Recommendation			
RE Specialist			
Deputy Concurrence			

Directive

6501.1

9/19/91

DELEGATION OF ENFORCEMENT AUTHORITY

I. PURPOSE
This Directive delegates authority to Regulatory Enforcement and Animal Care (REAC), Regulatory Enforcement, to carry out enforcement activities provided for in laws and regulations administered by APHIS.

II. AUTHORITIES
The authorities for APHIS program activities including enforcement action are specified as follows:

A. Title 7, Code of Federal Regulations, Section 371.2(c)(2)(i) through (xiii) authorizes Plant Protection and Quarantine and Biotechnology, Biologics, and Environmental Protection (BBEP) programs.

B. Title 7, Code of Federal Regulations, Section 371.2(d)(2)(i) through (xviii) authorizes Veterinary Services programs.

C. The Animal Welfare Act, as amended (7 U.S.C. 2131-2147, 2149-2155) and the Horse Protection Act (15 U.S.C. 1821-1831) authorize REAC Animal Care programs.

D. The Virus-Serum Toxin Act, as amended (21 U.S.C. 151-159) authorizes the BBEP veterinary biologics program.

III. POLICY
It is APHIS policy to support program activities with the appropriate enforcement action necessary to achieve the Agency mission. Regulatory Enforcement, the investigative unit within APHIS, is routinely requested by APHIS program officials to participate in or carry out independently a wide range of enforcement activities.

The enforcement activities may include inspections, investigations, seizures, holds, condemnation, and/or the evaluation and referral of violation cases to the Office of General Counsel for issuance of formal complaints.

IV.
DELEGATION OF
AUTHORITY

The authority to carry out enforcement activities under the above authorities is hereby delegated to REAC, Regulatory Enforcement. When requested by the appropriate APHIS program official, Regulatory Enforcement is authorized to conduct activities as provided for in the enabling legislation either independently or in a cooperative effort with program personnel.

A handwritten signature in cursive script, appearing to read "Robert M. White", followed by a large, stylized flourish or initial "Q".

Acting Administrator

Request for Investigation of Alleged Violations
of the Animal Welfare Act Regulations and/or Standards

FEB 1 1991

Sector Supervisors
Regulatory Enforcement and Animal Care

Due to our current budget and travel constraints, and with the concurrence of the REAC Management Team, we are instituting a new policy concerning Animal Welfare violations.

When the desired and appropriate resolution of a violation is the issuance of a Warning Ticket, it should be handled by the Animal Care Sector Office.

The proper sequence is as follows:

1. An Animal Care Inspector recommends an existing violation(s) should be resolved by the issuance of a Warning Ticket. He/She completes the 7008 inspection report and 7012 report of alleged violation, and submits them to the Animal Care Sector Office with a recommendation of the issuance of a Warning Ticket.
2. Upon receipt, review, and concurrence by the Animal Care Sector Office, the Animal Care Sector Supervisor or his/her designee should check the CITS program for prior violations. If the violator can be issued a Warning Ticket, it should be prepared and issued by the Animal Care Sector Supervisor. A CITS program has been developed for use by the Animal Care Sector Office in order to assign control/accountability numbers for each Warning Ticket issued. The number assigned by the CITS program should be shown on the top right margin of the corresponding Warning Ticket.
3. The Warning Ticket should be sent to the violator by certified return receipt mail. All related documentation and/or information should be placed in the violator's file.

When the desired and appropriate resolution of a violation is a complete investigation, with the investigative file submitted to the Regulatory Enforcement Staff for possible prosecution, it should be handled by both the Regulatory Enforcement and Animal Care Sector Offices.

The proper sequence is as follows:

1. An Animal Care Inspector recommends an existing violation(s) requires a thorough investigation and possible prosecution. He/She complete the 7008 inspection report and 7012 report of alleged violation and submits them to the Animal Care Sector Office along with their recommendation.

2. The Animal Care Sector Supervisor or his/her designee should review the 7008 and accompanying 7012, in order to ascertain that they are complete and accurate, and a thorough investigation is warranted.

3. If the decision is made that an investigation is warranted, a thorough search of the alleged violator's file should be conducted. All pertinent information/documentation should be attached to the Request for Investigation form (draft copy enclosed). The complete package should be forwarded to the appropriate Regulatory Enforcement Sector Supervisor.

4. The Regulatory Enforcement Sector Supervisor or his/her designee should review the investigation request package. If it is complete, it should be addressed and forwarded to the appropriate Senior Investigator for investigation and submission. After the request form has been addressed and dated, a copy should be made and given to the appropriate Animal Care Clerk to be placed in the alleged violator's file.

NOTE: In those instances where the Animal Care request crosses Regulatory Enforcement Sector lines, i.e., Southeastern Animal Care Sector but Northeastern Regulatory Enforcement Sector; the Animal Care Sector Supervisor may have his/her Regulatory Enforcement counterpart review the package and forward it to the appropriate Regulatory Enforcement Sector Supervisor for assignment.

Joan M. Arnoldi

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and
Animal Care

Enclosure

cc:

M. H. Cook, REAC, Hyattsville, MD
R. L. Crawford, REAC, Hyattsville, MD
F. W. Germaine, REAC, Hyattsville, MD
K. M. Carey, REAC, Hyattsville, MD

Request for Investigation of Alleged
Violations of the Animal Welfare Act,
Regulations and/or Standards

Sector Supervisor
Regulatory Enforcement, REAC

The following documents are enclosed to assist in the initiation of an
investigation involving:

NAME: _____ LIC./REG.: _____

d/b/a: _____ PHONE: _____

ADDRESS: _____

_____ APHIS 7003	_____ APHIS 7012	_____ HEALTH CERTIFICATES
_____ APHIS 7004	_____ APHIS 7019	_____ AIRBILLS/INVOICES
_____ APHIS 7005	_____ APHIS 7020	_____ MEASUREMENTS
_____ APHIS 7006	_____ APHIS 7020A	_____ SALE/PURCHASE RECORDS
_____ APHIS 7006A	_____ APHIS 7023	_____ PHOTOGRAPHS
_____ APHIS 7008	_____ APHIS 7024	_____ COMPLAINTS
_____ APHIS 7011	_____ STATEMENTS/LOGS	_____ PRIOR VIOLATIONS

ADDITIONAL INFORMATION: _____

Sector Supervisor
Animal Care, REAC





United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject: Providing Testimony or Official Documents

Date: January 28, 1991

To: Animal Care Sector Personnel
Regulatory Enforcement and Animal Care

Enclosed please find new requirements governing the providing of testimony or official documents by APHIS employees in regard to judicial or administrative proceedings. The new Departmental regulations found in 7 CFR, Section 1.210-1.218 are the result of the U.S. Federal Court decision in Touhy v. Ragen.

Upon receipt of a subpoena or a verbal request to testify or produce official documents related to employment with USDA, you must immediately contact your Sector Supervisor to initiate the approval process. Your Sector Supervisor will take responsibility for notification of RE Staff and Legislative and Public Affairs.

If you are requested to testify or produce official documents prior to receiving official approval, the Departmental policy advises the Touhy Regulation Statement be read to the hearing official. The Touhy Regulation Statement is as follows:

"I must respectfully advise the Court that under instruction to me by the Secretary of Agriculture, I must respectfully decline to produce the requested records in accordance with Departmental regulations at 7 C.F.R. Section 1.210-1.218 55 Federal Register 42347 (October 19, 1990)."

Morley H. Cook
Associate Deputy Administrator
Regulatory Enforcement and
Animal Care



Bulletin

91-2

11/27/90

NEW REGULATIONS ON TESTIFYING OR PRODUCING OFFICIAL DOCUMENTS

I. PURPOSE

The purpose of this Bulletin is to serve as interim guidance to employees who receive a subpoena or are asked to testify, appear, or produce an official document(s) in judicial or administrative proceedings where their testimony or the document(s) arise out of their employment with USDA. New regulations were published in the Federal Register on October 19, 1990, which establish new requirements for USDA employees, and repeal Departmental Regulation 1530-1.

II. POLICY

When an employee receives a subpoena to testify, or when an employee is requested to produce an official document(s), it is necessary to immediately contact the following office for guidance on FTS 436-7776 or Area Code (301) 436-7776:

Freedom of Information Act/Privacy Act (FOIA/PA)
Legislative and Public Affairs
6505 Belcrest Road, Room 600, Federal Building
Hyattsville, MD 20782
Fax Number: 436-5941

As a result of the new regulations, prior approval must be given by the Administrator of APHIS, and concurred in by the General Counsel, prior to an APHIS employee appearing as a witness or producing official documents in a judicial or administrative proceeding.

The new regulations do not apply to appearances by USDA employees as witnesses in judicial or administrative proceedings which are purely personal or do not arise out of or relate to their employment with USDA.


Administrator

TOUHY REGULATION STATEMENT

"I must respectfully advise the Court that under instruction to me by the Secretary of Agriculture, I must respectfully decline to produce the requested records, in accordance with Departmental regulations at 7 C.F.R. §§ 1.210-1.218 55 Federal Register 42347 (October 19, 1990).

See, Touhy v. Ragen, 340 U.S. 464, 465 (1950).



United States
Department of
Agriculture

Office of the
General
Counsel

Washington,
D.C.
20250-1400

NOV 5 1990

MEMORANDUM FOR DEPUTY GENERAL COUNSEL
ASSOCIATE GENERAL COUNSELS
ASSISTANT GENERAL COUNSELS
REGIONAL ATTORNEYS
ASSOCIATE REGIONAL ATTORNEYS
ASSISTANT REGIONAL ATTORNEYS

FROM: Alan Charles Raul *ACR*
General Counsel

SUBJECT: Touhy Regulations

Attached is a copy of new regulations recently signed by the Secretary establishing procedures governing the appearances of the United States Department of Agriculture (USDA) employees as witnesses in order to testify or produce official documents in judicial or administrative proceedings. The regulations specifically repeal 7 CFR \$1.21 (the portion of the USDA Freedom of Information Act (FOIA) regulations that pertains to compulsory process). Departmental Regulation 1530-1, the current internal regulation governing the appearance of USDA employees as witnesses, is in the process of being repealed.

The attached regulations set forth in one place all limitations on employees testifying, whether as fact witnesses or in response to subpoenas for records. The regulations provide:

- (1) That where the United States is a party, an employee can only testify or produce records on behalf of another party in response to a subpoena, but a subpoena will not be necessary when the attorney responsible for representing the United States authorizes the appearance or production;
- (2) That where the United States is a party, the head of an agency shall consult with the General Counsel as to whether there are grounds to oppose the employee's attendance or production of documents on behalf of another party;
- (3) That where the United States is not a party, subpoenas for records shall be treated as FOIA requests and handled in accordance with USDA FOIA regulations;

(4) That where the United States is not a party, an employee must be served a subpoena to testify on behalf of any litigant, but a subpoena will not be necessary when it is determined by the agency head to be in the interest of USDA for the employee to testify, and such determination is concurred in by the appropriate Assistant or Under Secretary and the General Counsel; and

(5) That where the United States is not a party, an employee served with a subpoena to testify may not so testify unless his appearance has been authorized by his agency head, with the concurrence of the General Counsel, based upon a determination that his appearance is in the interest of USDA.

It is the intent of the regulations that decisions made by USDA agencies be retained at the agency head level. Accordingly, no provision is made for the agency head to delegate his responsibilities. It is my belief that these matters also should be kept at a corresponding senior level in this Office, accordingly, only the Deputy General Counsel and Associate General Counsels are delegated authority to carry out the responsibilities of the General Counsel provided in §1.214(b) (1) and (2). All recipients of this memorandum are authorized to carry out the responsibilities of the General Counsel provided in other sections of the regulations.

Attachment

Rules and Regulations

Federal Register

Vol. 55, No. 203

Friday, October 19, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Appearance of USDA Employees as Witnesses in Judicial or Administrative Proceedings

AGENCY: Office of the Secretary, USDA.
ACTION: Final rule.

SUMMARY: This document establishes procedures governing the appearance of USDA employees as witnesses in order to testify or produce official documents in judicial or administrative proceedings.

EFFECTIVE DATE: October 19, 1990.

FOR FURTHER INFORMATION CONTACT: Robert L. Siegler, Deputy Assistant General Counsel, Research and Operations Division, Office of the General Counsel, United States Department of Agriculture, Washington, DC 20250-1400, (202) 447-6035.

SUPPLEMENTARY INFORMATION: At present, USDA has an internal directive (Departmental Regulation 1530-1) that sets forth procedures governing the appearance of USDA employees as witnesses in order to testify or produce official documents in administrative or judicial proceedings. In addition, as part of its regulations relating to the Freedom of Information Act, USDA has a section relating to compulsory process (7 CFR 1.21). Finally, there is currently no regulation that specifically provides the conditions under which USDA will prohibit its employees who have received subpoenas from testifying as to matters that arise out of their employment with USDA, where the United States is not a party to the proceeding. This rule consolidates the provisions contained in 7 CFR 1.21 and in Departmental Regulation 1530-1, and adds provisions that provide the

conditions under which employees may testify in judicial or administrative proceedings where their testimony arises out of their employment with USDA.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order No. 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, Public Law No. 96-354, and, thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 1

Administrative practice and procedures; Witnesses.

PART 1—ADMINISTRATIVE REGULATIONS

Accordingly, part 1, title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301, unless otherwise noted.

2. Section 1.21 is removed.

3. A new subpart K is added to read as follows:

Subpart K—Appearance of USDA Employees as Witnesses in Judicial or Administrative Proceedings.

Sec.

1.210 Purpose.

1.211 Definitions.

1.212 General.

1.213 Appearance as a witness on behalf of the United States.

1.214 Appearance as a witness on behalf of a party other than the United States where the United States is not a party.

1.215 Subpoenas duces tecum for USDA records in judicial or administrative proceedings in which the United States is not a party.

1.216 Appearance as a witness or production of documents on behalf of a party other than the United States where the United States is a party.

1.217 Witness fees and travel expenses.

1.218 Penalty.

Authority: 5 U.S.C. 301

§ 1.210 Purpose.

This subpart sets forth procedures governing the appearance of USDA employees as witnesses in order to testify or produce official documents in judicial or administrative proceedings when such appearance is in their official capacity or arises out of or is related to their employment with USDA. These regulations do not apply to appearances by USDA employees as witnesses in judicial or administrative proceedings which are purely personal or do not arise out of or relate to their employment with USDA. This subpart also does not apply to Congressional requests or subpoenas for testimony or documents.

§ 1.211 Definitions.

(a) *Administrative proceeding* means any proceeding pending before any federal, state, or local agency and undertaken for the purpose of the issuance of any regulations, orders, licenses, permits, or other rulings, or the adjudication of any matter, dispute, or controversy.

(b) *Appearance* means testimony or production of documents the request for which arises out of an employee's official duties with USDA or relates to his or her employment with USDA. For the purpose of this subpart, an appearance also includes an affidavit, deposition, interrogatory, or other required written submission.

(c) *Judicial proceeding* means any case or controversy pending before any federal, state, or local court.

(d) *Travel expenses* means the amount of money paid to a witness for reimbursement for transportation, lodging, meals, and other miscellaneous expenses in connection with attendance at a judicial or administrative proceeding.

(e) *USDA* means the United States Department of Agriculture.

(f) *USDA agency* means an organizational unit of USDA whose head reports to an official within the Office of the Secretary of Agriculture.

(g) *Valid summons, subpoena, or other compulsory process* means an order that is served properly and within the legal authority and the jurisdictional boundaries of the court or administrative agency or official that has issued it.

(h) *Witness fees* means the amount of money paid to a witness as

compensation for attendance at a judicial or administrative proceeding.

§ 1.212 General.

No USDA employee may provide testimony or produce documents in a judicial or administrative proceeding unless authorized in accordance with this subpart.

§ 1.213 Appearance as a witness on behalf of the United States.

An employee of USDA may appear as a witness on behalf of the United States in any judicial or administrative proceeding without the issuance of a summons, subpoena, or other compulsory process. Employees should obtain permission for such an appearance from their immediate supervisor unless the USDA agency or General Counsel has issued instructions providing otherwise.

§ 1.214 Appearance as a witness on behalf of a party other than the United States where the United States is not a party.

(a) An employee of USDA served with a valid summons, subpoena, or other compulsory process demanding his or her appearance, or otherwise requested to appear on behalf of a party other than the United States in a judicial or administrative proceeding in which the United States is not a party, shall promptly notify the head of his or her USDA agency of the existence and nature of the order compelling his or her appearance, or of the document requesting his or her attendance. He or she shall also specify, if that is known, the nature of the judicial or administrative proceeding and the nature of the testimony or documents requested.

(b)(1) An employee of USDA served with a valid summons, subpoena, or other compulsory process, or requested to appear as a witness on behalf of a party other than the United States in a judicial or administrative proceeding in which the United States is not a party, may appear only if such appearance has been authorized by the head of his or her USDA agency, with the concurrence of the General Counsel, based upon a determination that such an appearance is in the interest of USDA.

(2) An employee of USDA requested to appear as a witness on behalf of a party other than the United States in a judicial or administrative proceeding in which the United States is not a party, without the service of a valid summons, subpoena, or other compulsory process, may appear only if such appearance has been authorized by the head of his or her USDA agency and approved by the appropriate Assistant Secretary. Under

Secretary or other general officer, and by the General Counsel, based upon a determination that such an appearance is in the interest of USDA.

(c) Unless an appearance is authorized as provided in paragraphs (b)(1) or (b)(2) of this section, the employee shall appear at the stated time and place (unless advised by the General Counsel or his or her designee that the summons, subpoena, or other process was not validly issued or served), produce a copy of these regulations and respectfully decline to provide any testimony. As appropriate, the General Counsel or his or her designee will request the assistance of the Department of Justice or of a United States Attorney, in the case of a judicial proceeding; or of the official or attorney representing the United States, in the case of an administrative proceeding, to represent the interests of the employee and USDA.

(d) If there is any question regarding the validity of a summons, subpoena, or other compulsory process, an employee shall contact the Office of the General Counsel for advice.

(e)(1) In determining whether the employee's appearance is in the interest of USDA, authorizing officials should consider the following:

- (i) what interest of USDA would be promoted by the employee's testimony;
- (ii) whether an appearance would result in an unnecessary interference with the duties of the USDA employee;
- (iii) whether an employee's testimony would result in the appearance of improperly favoring one litigant over another.

(2) The considerations listed in paragraph (e)(1) of this section are illustrative and not exhaustive.

§ 1.215 Subpoenas duces tecum for USDA records in judicial or administrative proceedings in which the United States is not a party.

(a) Subpoenas duces tecum for USDA records in judicial or administrative proceedings in which the United States is not a party shall be deemed to be requests for records under the Freedom of Information Act and shall be handled pursuant to the rules governing public disclosure under subpart A of this part.

(b) Whenever a subpoena duces tecum compelling the production of records is served on a USDA employee in a judicial or administrative proceeding in which the United States is not a party, the employee, after consultation with the General Counsel or his or her designee, shall appear in response thereto, respectfully decline to produce the records on the grounds that it is prohibited by this section and state

that the production of the records involved will be handled in accordance with subpart A of this part.

§ 1.216 Appearance as a witness or production of documents on behalf of a party other than the United States where the United States is a party.

(a) An employee of USDA served with a valid summons, subpoena, or other compulsory process demanding his or her appearance, or otherwise requested to appear or produce documents on behalf of a party other than the United States in a judicial or administrative proceeding in which the United States is a party, shall promptly notify the head of his or her USDA agency and the General Counsel or his or her designee of the existence and nature of the order compelling his or her appearance, or of the document requesting his or her appearance. He or she shall also specify, if that is known, the nature of the judicial or administrative proceeding and the nature of the testimony or documents requested.

(b)(1) Except as provided in paragraph (b)(2) of this section, an employee of USDA only may appear as a witness or produce records on behalf of a party other than the United States in a judicial or administrative proceeding in which the United States is a party if such appearance or production has been ordered by the service on the employee of a valid summons, subpoena, or other compulsory process issued by a court, administrative agency, or other official authorized to compel his or her appearance.

(2) An employee requested to appear as a witness or produce records on behalf of a party other than the United States in a judicial or administrative proceeding in which the United States is a party, without being served a valid summons, subpoena, or other compulsory process, may appear or produce records only if such appearance or production has been authorized by a representative of the Department of Justice, the United States Attorney, or other counsel who is representing the United States in the case of a judicial proceeding; or by the official or attorney representing the United States, in the case of an administrative proceeding.

(c) The head of the USDA agency shall consult with the General Counsel or his or her designee as to whether there are grounds to oppose the employee's attendance or production of documents and, if so, whether to seek to quash the summons, subpoena, compulsory process, or to deny authorization under paragraph (b)(2) of this section.

(d) As appropriate, the General Counsel or his or her designee will request the assistance of the Department of Justice, a United States Attorney, or other counsel representing the United States, in the case of a judicial proceeding; or of the official or attorney representing the United States, in the case of an administrative proceeding, to represent the interest of the employee and USDA.

(e) If there is any question regarding the validity of a summons, subpoena, or other compulsory process, an employee shall contact the Office of the General Counsel for advice.

§ 1.217 Witness fees and travel expenses.

(a) Any employee of USDA who attends a judicial or administrative proceeding as a witness in order to testify or produce official documents on behalf of the United States is entitled to travel expenses in connection with such appearance in accordance with the Agriculture Travel Regulations.

(b) An employee of USDA who attends a judicial or administrative proceeding on behalf of the United States is not entitled to receive fees for such attendance.

(c) An employee of USDA who attends a judicial or administrative proceeding on behalf of a party other than the United States when such appearance is in his or her official capacity or arises out of or relates to his or her employment with USDA is entitled to travel expenses in accordance with the Agriculture Travel Regulations to the extent that such expenses are not paid for by the court, agency, or official compelling his or her appearance or by the party on whose behalf he or she appears.

(d) An employee of USDA who attends a judicial or administrative proceeding on behalf of a party other than the United States when such appearance is in his or her official capacity or arises out of or relates to his or her employment with USDA is required to collect the authorized fees for such service and remit such fees to his or her USDA agency.

§ 1.218 Penalty.

An employee who testifies or produces records in a judicial or administrative proceeding in violation of the provisions of this regulation shall be subject to disciplinary action.

Done this 12th day of October, 1990, at Washington, DC.

Clayton Youtler,

Secretary of Agriculture.

[FR Doc. 90-24763 Filed 10-18-90; 8:45 am]

BILLING CODE 3410-01-04

Animal and Plant Health Inspection Service

7 CFR Part 319

(Docket No. 89-194)

Apricots, Nectarines, Peaches, and Plums From Chile

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Fruits and Vegetables regulations to relieve restrictions on the importation of stonefruit (apricots, nectarines, peaches, and plums) from Chile. This change will allow these fruits to be imported under multiple safeguards, including inspection in Chile, but without mandatory treatment. This action is necessary to help ensure that untreated fruits can be imported without significant risk of introducing insect pests into the United States.

EFFECTIVE DATE: November 19, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Cooper, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8845.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 (the regulations) prohibit or restrict the importation of fruits and vegetables into the United States because of the risk that the fruits or vegetables could introduce insect pests that could damage domestic plants.

Apricots, nectarines, peaches, and plums (referred to below as stonefruit) from Chile present a risk of introducing various insect pests, including *Proeulia* spp., *Leptoglossus chilensis*, *Megalometus chilensis*, *Naupactus xanthographus*, *Listroderus subcinctus*, and *Conoderus rufangulus*. These pests do not normally feed on stonefruit, but may be present in shipments of stonefruit as "hitchhiking" pests.

Under current § 319.56-2m, these fruits may be imported from Chile only after they have undergone an approved methyl bromide treatment to destroy insects known to attack them or to be associated with them as hitchhikers.

We published in the Federal Register on July 13, 1989 (54 FR 29586-29569, Docket No. 88-176), a proposal to amend the regulations by allowing stonefruit from Chile to be imported without mandatory treatment, if the stonefruit is imported in accordance with a preclearance program involving

inspections of the stonefruit in Chile and other requirements designed to ensure the stonefruit is free of insect pests.

Clearance for export to the United States will involve inspection, safeguards, treatments, and other procedures required by the regulations. Clearance activities will be performed under the direction of Animal and Plant Health Inspection Service (APHIS) inspectors in Chile, and will include inspections by APHIS inspectors, or by inspectors of the national plant protection service of Chile in the presence of APHIS inspectors. These activities, to determine the eligibility of the fruit for shipment to the United States, are called preclearance to distinguish them from similar inspections, treatments, and other procedures performed by APHIS inspectors at ports of arrival in the United States.

The proposal solicited comments to be submitted by September 11, 1989. We received a total of 30 written comments during the comment period. Four comments opposed the proposed rule, 7 comments supported the proposed rule as it was written, and 19 comments generally supported the proposed rule but suggested changes to its provisions. Comments received on the proposed rule and our responses to them are discussed below.

We are adopting the provisions of the proposed rule, with certain changes discussed below, for the reasons set forth in the proposal and in this supplementary information section.

Comments and Responses

Comment: The regulations attempt to be too specific in implementing what is essentially a trial program that will need fine-tuning as participants adjust to it. Technical aspects such as minimum lot size, sample sizes and sampling procedures, and administrative details should be negotiated and resolved annually in an operational agreement, rather than specified in the regulations.

Response: No change was made in response to this comment; however, note that minimum lot size requirements have been eliminated in response to another comment discussed below. We believe that the regulations contain specific requirements only to the degree necessary to meet legal requirements and to support enforcement and operational feasibility. If the regulations did not contain specific references to matters such as sample sizes and sampling procedures, the interested public could not analyze and comment on the rule in any meaningful way, operational planning for implementing



Subject: Appearance of USDA Employees as Witnesses
in Judicial or Administrative Proceedings

Date: NOV 14 1990

To: See DISTRIBUTION

The enclosed document establishes procedures governing the appearance of USDA employees as witnesses in order to testify or produce official documents in judicial or administrative proceedings. The REAC Memorandum regarding subpoenas will have to be rewritten to incorporate these new procedures.

Arthur J. Wilson
Assistant Deputy Administrator
Regulatory Enforcement

Enclosure

DISTRIBUTION:

L. J. King, Deputy Administrator, VS
REAC Policy Team, Headquarters
Sector Supervisors, REAC



Rules and Regulations

Federal Register

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conditions under which employees may testify in judicial or administrative proceedings where their testimony arises out of their employment with USDA.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order No. 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, Public Law No. 96-354, and, thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 1

Administrative practice and procedures; Witnesses.

PART 1—ADMINISTRATIVE REGULATIONS

Accordingly, part 1, title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301, unless otherwise noted.

2. Section 1.21 is removed.

3. A new subpart K is added to read as follows:

Subpart K—Appearance of USDA Employees as Witnesses in Judicial or Administrative Proceedings.

Sec.

1.210 Purpose.

1.211 Definitions.

1.212 General.

1.213 Appearance as a witness on behalf of the United States.

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1.216 Appearance as a witness or production of documents on behalf of a party other than the United States where the United States is a party.

1.217 Witness fees and travel expenses.

1.218 Penalty.

Authority: 5 U.S.C. 301

§ 1.210 Purpose.

This subpart sets forth procedures governing the appearance of USDA employees as witnesses in order to testify or produce official documents in judicial or administrative proceedings when such appearance is in their official capacity or arises out of or is related to their employment with USDA. These regulations do not apply to appearances by USDA employees as witnesses in judicial or administrative proceedings which are purely personal or do not arise out of or relate to their employment with USDA. This subpart also does not apply to Congressional requests or subpoenas for testimony or documents.

§ 1.211 Definitions.

(a) *Administrative proceeding* means any proceeding pending before any federal, state, or local agency and undertaken for the purpose of the issuance of any regulations, orders, licenses, permits, or other rulings, or the adjudication of any matter, dispute, or controversy.

(b) *Appearance* means testimony or production of documents the request for which arises out of an employee's official duties with USDA or relates to his or her employment with USDA. For the purpose of this subpart, an appearance also includes an affidavit, deposition, interrogatory, or other required written submission.

(c) *Judicial proceeding* means any case or controversy pending before any federal, state, or local court.

(d) *Travel expenses* means the amount of money paid to a witness for reimbursement for transportation, lodging, meals, and other miscellaneous expenses in connection with attendance at a judicial or administrative proceeding.

(e) *USDA* means the United States Department of Agriculture.

(f) *USDA agency* means an organizational unit of USDA whose head reports to an official within the Office of the Secretary of Agriculture.

(g) *Valid summons, subpoena, or other compulsory process* means an order that is served properly and within the legal authority and the jurisdictional boundaries of the court or administrative agency or official that has issued it.

(h) *Witness fees* means the amount of money paid to a witness as

compensation for attendance at a judicial or administrative proceeding.

§ 1.212 General.

No USDA employee may provide testimony or produce documents in a judicial or administrative proceeding unless authorized in accordance with this subpart.

§ 1.213 Appearance as a witness on behalf of the United States.

An employee of USDA may appear as a witness on behalf of the United States in any judicial or administrative proceeding without the issuance of a summons, subpoena, or other compulsory process. Employees should obtain permission for such an appearance from their immediate supervisor unless the USDA agency or General Counsel has issued instructions providing otherwise.

§ 1.214 Appearance as a witness on behalf of a party other than the United States where the United States is not a party.

(a) An employee of USDA served with a valid summons, subpoena, or other compulsory process demanding his or her appearance, or otherwise requested to appear on behalf of a party other than the United States in a judicial or administrative proceeding in which the United States is not a party, shall promptly notify the head of his or her USDA agency of the existence and nature of the order compelling his or her appearance, or of the document requesting his or her attendance. He or she shall also specify, if that is known, the nature of the judicial or administrative proceeding and the nature of the testimony or documents requested.

(b)(1) An employee of USDA served with a valid summons, subpoena, or other compulsory process, or requested to appear as a witness on behalf of a party other than the United States in a judicial or administrative proceeding in which the United States is not a party, may appear only if such appearance has been authorized by the head of his or her USDA agency, with the concurrence of the General Counsel, based upon a determination that such an appearance is in the interest of USDA.

(2) An employee of USDA requested to appear as a witness on behalf of a party other than the United States in a judicial or administrative proceeding in which the United States is not a party, without the service of a valid summons, subpoena, or other compulsory process, may appear only if such appearance has been authorized by the head of his or her USDA agency and approved by the appropriate Assistant Secretary, Under

Secretary or other general officer, and by the General Counsel, based upon a determination that such an appearance is in the interest of USDA.

(c) Unless an appearance is authorized as provided in paragraphs (b)(1) or (b)(2) of this section, the employee shall appear at the stated time and place (unless advised by the General Counsel or his or her designee that the summons, subpoena, or other process was not validly issued or served), produce a copy of these regulations and respectfully decline to provide any testimony. As appropriate, the General Counsel or his or her designee will request the assistance of the Department of Justice or of a United States Attorney, in the case of a judicial proceeding; or of the official or attorney representing the United States, in the case of an administrative proceeding, to represent the interests of the employee and USDA.

(d) If there is any question regarding the validity of a summons, subpoena, or other compulsory process, an employee shall contact the Office of the General Counsel for advice.

(e)(1) In determining whether the employee's appearance is in the interest of USDA, authorizing officials should consider the following:

(i) What interest of USDA would be promoted by the employee's testimony;

(ii) Whether an appearance would result in an unnecessary interference with the duties of the USDA employee;

(iii) Whether an employee's testimony would result in the appearance of improperly favoring one litigant over another.

(2) The considerations listed in paragraph (e)(1) of this section are illustrative and not exhaustive.

§ 1.215 Subpoenas duces tecum for USDA records in judicial or administrative proceedings in which the United States is not a party.

(a) Subpoenas duces tecum for USDA records in judicial or administrative proceedings in which the United States is not a party shall be deemed to be requests for records under the Freedom of Information Act and shall be handled pursuant to the rules governing public disclosure under subpart A of this part.

(b) Whenever a subpoena duces tecum compelling the production of records is served on a USDA employee in a judicial or administrative proceeding in which the United States is not a party, the employee, after consultation with the General Counsel or his or her designee, shall appear in response thereto, respectfully decline to produce the records on the grounds that it is prohibited by this section and state

that the production of the records involved will be handled in accordance with subpart A of this part.

§ 1.216 Appearance as a witness or production of documents on behalf of a party other than the United States where the United States is a party.

(a) An employee of USDA served with a valid summons, subpoena, or other compulsory process demanding his or her appearance, or otherwise requested to appear or produce documents on behalf of a party other than the United States in a judicial or administrative proceeding in which the United States is a party, shall promptly notify the head of his or her USDA agency and the General Counsel or his or her designee of the existence and nature of the order compelling his or her appearance, or of the document requesting his or her appearance. He or she shall also specify, if that is known, the nature of the judicial or administrative proceeding and the nature of the testimony or documents requested.

(b)(1) Except as provided in paragraph (b)(2) of this section, an employee of USDA only may appear as a witness or produce records on behalf of a party other than the United States in a judicial or administrative proceeding in which the United States is a party if such appearance or production has been ordered by the service on the employee of a valid summons, subpoena, or other compulsory process issued by a court, administrative agency, or other official authorized to compel his or her appearance.

(2) An employee requested to appear as a witness or produce records on behalf of a party other than the United States in a judicial or administrative proceeding in which the United States is a party, without being served a valid summons, subpoena, or other compulsory process, may appear or produce records only if such appearance or production has been authorized by a representative of the Department of Justice, the United States Attorney, or other counsel who is representing the United States in the case of a judicial proceeding; or by the official or attorney representing the United States, in the case of an administrative proceeding.

(c) The head of the USDA agency shall consult with the General Counsel or his or her designee as to whether there are grounds to oppose the employee's attendance or production of documents and, if so, whether to seek to quash the summons, subpoena, compulsory process, or to deny authorization under paragraph (b)(2) of this section.

Id) As appropriate, the General Counsel or his or her designee will request the assistance of the Department of Justice, a United States Attorney, or other counsel representing the United States, in the case of a judicial proceeding; or of the official or attorney representing the United States, in the case of an administrative proceeding, to represent the interest of the employee and USDA.

(e) If there is any question regarding the validity of a summons, subpoena, or other compulsory process, an employee shall contact the Office of the General Counsel for advice.

§ 1.217 Witness fees and travel expenses.

(a) Any employee of USDA who attends a judicial or administrative proceeding as a witness in order to testify or produce official documents on behalf of the United States is entitled to travel expenses in connection with such appearance in accordance with the Agriculture Travel Regulations.

(b) An employee of USDA who attends a judicial or administrative proceeding on behalf of the United States is not entitled to receive fees for such attendance.

(c) An employee of USDA who attends a judicial or administrative proceeding on behalf of a party other than the United States when such appearance is in his or her official capacity or arises out of or relates to his or her employment with USDA is entitled to travel expenses in accordance with the Agriculture Travel Regulations to the extent that such expenses are not paid for by the court, agency, or official compelling his or her appearance or by the party on whose behalf he or she appears.

(d) An employee of USDA who attends a judicial or administrative proceeding on behalf of a party other than the United States when such appearance is in his or her official capacity or arises out of or relates to his or her employment with USDA is required to collect the authorized fees for such service and remit such fees to his or her USDA agency.

§ 1.218 Penalty.

An employee who testifies or produces records in a judicial or administrative proceeding in violation of the provisions of this regulation shall be subject to disciplinary action.

Done this 12th day of October, 1990, at Washington, DC.

Clayton Youtler,

Secretary of Agriculture.

[FR Doc. 90-24763 Filed 10-18-90; 8:45 am]

BILLING CODE 3410-01-M

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 89-191]

Apricots, Nectarines, Peaches, and Plums From Chile

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Fruits and Vegetables regulations to relieve restrictions on the importation of stonefruit (apricots, nectarines, peaches, and plums) from Chile. This change will allow these fruits to be imported under multiple safeguards, including inspection in Chile, but without mandatory treatment. This action is necessary to help ensure that untreated fruits can be imported without significant risk of introducing insect pests into the United States.

EFFECTIVE DATE: November 19, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Cooper, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8545.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 (the regulations) prohibit or restrict the importation of fruits and vegetables into the United States because of the risk that the fruits or vegetables could introduce insect pests that could damage domestic plants.

Apricots, nectarines, peaches, and plums (referred to below as stonefruit) from Chile present a risk of introducing various insect pests, including *Proeulia* spp., *Leptoglossus chilensis*, *Megalometis chilensis*, *Noupaotus xanthographus*, *Listroderes subcinctus*, and *Conoderus rufangulus*. These pests do not normally feed on stonefruit, but may be present in shipments of stonefruit as "hitchhiking" pests.

Under current § 319.56-2m, these fruits may be imported from Chile only after they have undergone an approved methyl bromide treatment to destroy insects known to attack them or to be associated with them as hitchhikers.

We published in the Federal Register on July 13, 1989 (54 FR 29586-29589, Docket No. 88-176), a proposal to amend the regulations by allowing stonefruit from Chile to be imported without mandatory treatment, if the stonefruit is imported in accordance with a preclearance program involving

other requirements designed to ensure the stonefruit is free of insect pests.

Clearance for export to the United States will involve inspection, safeguards, treatments, and other procedures required by the regulations. Clearance activities will be performed under the direction of Animal and Plant Health Inspection Service (APHIS) inspectors in Chile, and will include inspections by APHIS inspectors, or by inspectors of the national plant protection service of Chile in the presence of APHIS inspectors. These activities, to determine the eligibility of the fruit for shipment to the United States, are called preclearance to distinguish them from similar inspections, treatments, and other procedures performed by APHIS inspectors at ports of arrival in the United States.

The proposal solicited comments to be submitted by September 11, 1989. We received a total of 30 written comments during the comment period. Four comments opposed the proposed rule, 7 comments supported the proposed rule as it was written, and 19 comments generally supported the proposed rule but suggested changes to its provisions. Comments received on the proposed rule and our responses to them are discussed below.

We are adopting the provisions of the proposed rule, with certain changes discussed below, for the reasons set forth in the proposal and in this supplementary information section.

Comments and Responses

Comment: The regulations attempt to be too specific in implementing what is essentially a trial program that will need fine-tuning as participants adjust to it. Technical aspects such as minimum lot size, sample sizes and sampling procedures, and administrative details should be negotiated and resolved annually in an operational agreement, rather than specified in the regulations.

Response: No change was made in response to this comment; however, note that minimum lot size requirements have been eliminated in response to another comment discussed below. We believe that the regulations contain specific requirements only to the degree necessary to meet legal requirements and to support enforcement and operational feasibility. If the regulations did not contain specific references to matters such as sample sizes and sampling procedures, the interested public could not analyze our comment on the rule in any meaningful way, operational planning for implementing

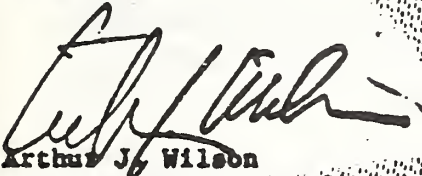
Memorandum of Understanding With the
Office of the Inspector General

JUN 8 1990

Regulatory Enforcement Sector Supervisors
Regulatory Enforcement Staff.

Enclosed for your information is a copy of the Memorandum of Understanding (MOU) recently executed between APHIS and the Inspector General. Please insure that all personnel under your supervision are made aware of the provisions of this MOU.

I do not expect that the MOU will materially affect our operational relationships with the Office of the Inspector General. However, we can expect that the document will generate a number of questions. We will try to address specific questions as they arise. This topic will also be placed on the agenda for the next Sector Supervisor meeting. If necessary, we will arrange for an OIG representative to meet with us at that time to resolve any remaining questions.



Arthur J. Wilson
Assistant Deputy Administrator
Regulatory Enforcement

Enclosure

cc:
J. M. Arnoldi, REAC, Hyattsville, MD ✓
M. H. Cook, REAC, Hyattsville, MD
E. E. Crooks, REAC, Hyattsville, MD

R. CRAWFORD
AC 55
H. CAREY

TRANSMITTAL OF DOCUMENTS

5/21/90

To

File, BAD

TYPE OF DOCUMENT

DOCUMENT NO.

12-34-30-0041-MU

MOU

ORIGINAL ☐NO MANUALLY
SIGNED COPIES

NO. OTHER COPIES

NAME OF COOPERATOR

• OIG

1. ☒ Document enclosed for your files.2. ☐ Copies of document for _____3. ☐ Document has been reviewed and recommended changes are noted thereon. Document to be resubmitted.

☐ Review document prior to execution. If any changes are desired please notify this office as the document has been approved only as presently written.

4. ☐ Acknowledge receipt of these documents by signing and returning the carbon copy of this transmittal.5. ☐ Funds under this document will be under Financial Data Code: _____

REMARKS

cc: George Robertson, M&B, HRD
213 FB

Larry Geri, M&B, RMSES
G-186 FB

Skip Wilson, REAC, RE ✓
205 FB

SIGNATURE

Erich S. Rudyj

Program Analyst
Financial Control Branch, Budget and Accounting Division

RECEIPT ACKNOWLEDGED

BY (Signature)

RETURN RECEIPTED COPY TO:

Financial Control Branch, Budget and Accounting Division
USDA, APHIS, M&B
Federal Building, Room 258
Hyattsville, MD 20782

DATE

AGREEMENT BETWEEN THE OFFICE OF INSPECTOR GENERAL
THE ANIMAL AND PLANT HEALTH INSPECTION SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE

1. Purpose

This document sets forth agreements between the Office of Inspector General (OIG), and the Animal and Plant Health Inspection Service (APHIS), regarding investigative and enforcement activities of the two agencies.

2. Jurisdiction

- A. Pursuant to a series of delegations of authority from the Secretary of Agriculture, APHIS conducts reviews, investigations and inspection activities in order that the Administrator, APHIS may effectively and efficiently carry out that agency's program and enforcement responsibilities.
- B. Pursuant to the Inspector General Act of 1978, the Agriculture and Food Act of 1981, Departmental Regulations 1700-1 and 1710-2, and delegations by the Secretary of Agriculture, OIG discharges its investigative and law enforcement responsibilities, and performs other activities in order to maintain the integrity of the programs and operations of the U.S. Department of Agriculture.

3. Referrals to OIG

The following matters shall be referred to OIG for investigative consideration:

- A. Smuggling incidents which involve animals and plants regulated by APHIS.
- B. Violations of the Endangered Species Act, including the Convention of International Trade in Endangered Species of wild fauna and flora (CITES).
- C. Employee related matters including:
 - (1) Assaults against APHIS employees in connection with the performance of their official duties. This includes threats of physical or other harm which are perceived to be genuine.
 - (2) Solicitation, offering or acceptance of bribes or gratuities.
 - (3) Extortion.
 - (4) Conflicts of Interest.
 - (5) Embezzlement.
 - (6) Misconduct (See Departmental Regulation 1710-2 for referral details).

atter, which are likely to require the execution of arrest or search warrants, serving of grand jury subpoenas, or the use of an investigative grand jury, special investigative techniques including consensual monitoring of telephone and non-telephone conversations, extraordinary surveillances, undercover activities, etc.

- E. Any other alleged criminal violations or employee misconduct not involving the inspection, regulatory or enforcement responsibilities of APHIS which would be referred to OIG pursuant to Departmental Regulation 1710-2.
- F. Any program matter which APHIS has determined that the public interest would be better served by an investigation by OIG.

4. Other matters relating to referrals to OIG

- A. All known facts and pertinent information concerning alleged violations or issues to be investigated shall be ~~forwarded in writing~~ by the ~~responsible APHIS official~~ to the appropriate OIG Regional Inspector General for Investigations (RIG/I) for investigative consideration or other appropriate action. A telephone call should precede the written request for investigation or assistance when a matter warrants immediate attention by OIG.
- B. APHIS shall not conduct further investigation or inquiry into matters referred to OIG, without prior coordination with the appropriate RIG/I. APHIS shall continue its day-to-day program responsibilities in any matter referred to OIG unless requested by OIG to suspend or alter such activity.
- C. In cases involving extortion, bribery or attempted bribery of or by any APHIS employee, bribery notification procedures outlined in APHIS directives shall be followed.
- D. All requests/referrals shall be handled by OIG in accordance with policies and procedures outlined in Departmental Regulation 1710-2. OIG shall notify APHIS within ten days of its intention to accept, decline, or refer a request to another investigative or law enforcement agency.

5. Interagency Coordination

- A. OIG and APHIS shall actively promote, both at the headquarters and field levels, a spirit of cooperation and mutual support to ensure the effective and efficient use of collective resources.
- B. Liaison is an integral part of investigative and enforcement activities and must be accomplished in a timely and effective manner. Therefore, OIG RIG/I's and appropriate APHIS officials shall establish the necessary supervisory contacts in order to ensure the regular and timely exchange of information involving suspected or alleged violations in their respective areas of responsibility.

- C. Some investigative matters which are referred to OIG by APHIS, or developed independently by OIG, may require joint investigation in order to resolve the matter by utilizing the scientific, professional and/or technical expertise of each agency. Both OIG and APHIS support the concept of joint investigative endeavors in appropriate cases.
- D. APHIS shall provide laboratory services as requested by OIG, and make available scientific, professional and technical personnel as consultants on an as needed basis.
- E. OIG shall inform the appropriate APHIS official(s) of significant developments in investigations, unless such information would compromise the investigation, jeopardize the physical safety of OIG Special Agents and others, or is prohibited from disclosure under Rule 6(e) of the Federal Rules of Criminal Procedure concerning the secrecy of Federal Grand Jury proceedings.

6. Reports

- A. OIG shall furnish APHIS with copies of OIG Reports of Investigation concerning APHIS programs, activities and employees in order to facilitate administrative or other appropriate enforcement actions. In matters which are investigated by agencies outside of the Department, OIG shall endeavor to obtain and furnish APHIS with pertinent information or copies of reports and, where possible, shall obtain permission for such information and reports to be used by APHIS for administrative and/or enforcement purposes.
- B. Copies of APHIS investigative reports will not be provided to OIG on a routine basis, but shall be made available upon request.

7. Contacts with U.S. Department of Justice and Other Prosecutive Entities

- A. The Office of the General Counsel (OGC) and OIG are the USDA agencies which are authorized to refer matters to the U.S. Department of Justice or other prosecutive entities at the state and local levels for appropriate legal action.
- B. APHIS shall respond to and cooperate with prosecutors in matters investigated independently by APHIS which have been or will be referred for prosecutive consideration by OGC. If contacted by a prosecutor in matters which have been investigated by OIG or another law enforcement agency, APHIS shall promptly notify appropriate OIG and OGC officials.
- C. If contacted by prosecutors on matters investigated by APHIS, OIG shall promptly notify the appropriate APHIS and OGC officials.

8. Liaison with Investigative and Law Enforcement Agencies

- A. APHIS, in carrying out its responsibilities, is required to interact with a number of investigative and law enforcement agencies outside the Department. APHIS may establish contacts and coordinate with investigative and law enforcement agencies as necessary in order to accomplish its regulatory, investigative and enforcement mission.

- B. APHIS shall not initiate contacts with outside investigative and law enforcement agencies in matters which fall within the purview of, or require coordination with OIG. If contacted by an outside agency in such instances, APHIS shall notify OIG immediately.

9. Inspector General Oversight


- A. The Inspector General Act of 1978 makes it the responsibility of the Inspector General to provide policy direction for investigations relating to the programs and operations of the Department. That Act also makes it the duty of the Inspector General to supervise and coordinate such investigative activity performed by others within the Department.
- B. To assist the Inspector General in carrying out his statutory responsibilities, APHIS agrees to periodically provide reports outlining the number, nature, scope, and final disposition of all of APHIS program investigations.
- C. This agreement does not preclude OIG from inquiring into any matter of an investigative or audit nature as it relates to APHIS.

10. Review of Agreement

There shall be periodic reviews of this agreement by respective OIG and APHIS officials to evaluate the efficiency and effectiveness of operations conducted in accordance with its provisions. This agreement also shall be reviewed in order to resolve any matter not specifically covered herein, and to assess the need for its modification. This agreement shall be modified or superseded if the Secretary, or the parties to this agreement, determine that it is not furthering the best interests of the Department.

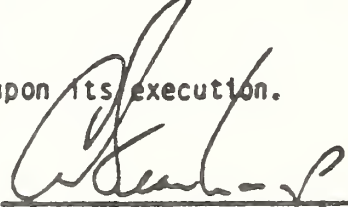
11. Effective Date

This agreement is effective immediately upon its execution.



Administrator
Animal and Plant Health
Inspection Service
5/11/90


Date



Assistant Inspector General
for Investigations
Office of Inspector General
5/11/90


Date

Approved:



Assistant Secretary
Marketing and Inspection Services
5/11/90

Date



Inspector General
Office of Inspector General
5-11-90

Date



January 21, 1986

VETERINARY SERVICES MEMORANDUM NO. 575.15

Subject: Surveillance for Fraudulent Blood Samples

To: Area Veterinarians in Charge, VS
Directors, VS Regions

I. PURPOSE

The purpose of this memorandum is to initiate certain surveillance activities to detect fraudulent blood samples and establish Agency policy and guidelines for handling blood samples in connection with possible prosecution for fraud.

II. CANCELLATION

Veterinary Services (VS) Memorandum No. 575.15 dated May 21, 1985, is hereby canceled.

III. GENERAL

A fraudulent blood sample is one whose source is not the animal to which it has been identified or is otherwise misrepresented. The submission of multiple samples originating from one or more donor animals and represented as having come from many individual animals is a fraudulent act. This type of activity is detrimental to our domestic and export programs, and every effort will be made to curtail this activity and to apprehend and prosecute the violators.

Whenever there is suspicion of fraudulent actions involving blood samples submitted to the testing laboratory for export purposes, immediate action must be taken to avoid the possibility of the export certificates being endorsed and the animals exported before the suspicious samples can be processed by the National Veterinary Services Laboratories (NVSL). (See paragraph VI for action to be taken.)

A surveillance program to detect fraudulent blood samples will be instituted at all U.S. Department of Agriculture (USDA)-approved private, university, and State diagnostic laboratories and all State-Federal cooperative brucellosis laboratories. The presumptive testing of these surveillance blood samples will be accomplished at NVSL, and the subsequent final blood typing of the positive samples will be done by a USDA-designated laboratory.

IV. PROCEDURES

A. Sampling

Three types of samples will be included in this surveillance program for the detection of fraudulent blood samples:

1. Routine Submissions (herd test, etc.)

Laboratory directors (supervisors) should submit all samples received at the laboratory from one source when fraud is suspected. Possible reasons for suspicion could include such things as uncharacteristic titer patterns; unusual uniformity of color, volume, and turbidity of serum or blood samples; or a history of previous illegal sample submission by an owner or veterinarian.

2. Market Cattle Identification Samples

Testing laboratories as assigned will select one block of 25 to 50 consecutive blood samples from each plant each time the plant is sampled. Selection of plants and the days on which samples are to be collected will be randomly assigned by the Program Planning Staff. Laboratories will be notified at the beginning of each month which plant they will sample on each working day. Instructions for sampling procedures at the laboratory will be in a monthly memorandum.

3. Export Samples (cattle only)

After export tests from all submissions, containing two or more samples, have been carried out at the diagnostic laboratory, a portion of each of the remaining serums will be forwarded to NVSL for presumptive testing.

B. Shipping

Every shipment of samples sent to NVSL for presumptive testing must be accompanied by a VS Form 10-4, "Specimen Submission," identifying the submitting laboratory by name and address in space No. 1. "Serum Screen" should be shown in space No. 7 as the "Examination Requested." Space Nos. 14, 16, 17, and 20 should also be completed. In space No. 20 under additional data, please indicate whether the samples are for routine screening or if they are suspicious samples. Whenever suspicious samples are submitted, please state the basis of your suspicions.

Frozen serum is preferred. If clots are sent, do not freeze but ship with icepacks. Forward samples by the usual method. (See VS Memorandum No. 700.1 (587.16) dated September 25, 1981.) No advance notice to the laboratory is necessary for routine samples. Include copies of all test histories and copies of all diagnostic test charts. If some samples appear to be spoiled, they should still be included. All samples submitted from a herd should be sent to NVSL. Do not submit a partial number or a statistical sampling.

V. SAMPLE ACCOUNTABILITY

A. An accountability record for suspected fraudulent blood samples and retest samples must be established by affidavit and maintained from the time the samples are determined to be suspicious at the laboratory and/or the animals are rebled until delivered to NVSL and/or on to another USDA-designated laboratory.

B. Whenever accountability of the suspected fraudulent blood samples or retest samples is given to another VS employee, the employee releasing the samples must give and sign an affidavit (no later than the next working day) certifying the identity of the recipient of the samples and listing the date, time, and place such accountability was released.

VI. COOPERATIVE STATE-FEDERAL BRUCELLOSIS LABORATORY DIRECTOR'S RESPONSIBILITIES

A. When blood samples are first suspected of being fraudulent, the laboratory director must immediately take steps to assure accountability for the samples within the laboratory.

B. Upon completion of the tests, the laboratory director will immediately notify both the State animal health official and the Area Veterinarian in Charge (AVIC).

C. With the concurrence of the AVIC, the laboratory director will supervise the preparation of the selected samples for shipment to NVSL. The package must be officially sealed (see paragraph XI-B for sealing instructions) to protect the integrity of the samples during shipment.

VII. AREA OFFICE'S RESPONSIBILITIES

A. Initial Suspicious Blood Samples

1. Arrange to send the suspicious samples, accompanied by a completed VS Form 10-4 to NVSL by Purolator, Federal Express, or a similar air courier service.

2. Notify the Regional Office by telephone concerning your suspicions. The Regional Office will notify the Assistant Deputy Administrator, Domestic Programs.

3. Notify NVSL by telephone that the suspected fraudulent blood samples are being sent to NVSL. Give NVSL approximate arrival time.

B. Presumptive Confirmation by NVSL

1. Based on instruction, unless otherwise directed by the Director of the Region, determine where the animals are located and arrange to have them rebled by a veterinary medical officer as soon as possible.

Maintain accountability of the retest samples and handle them as suspicious samples. Indicate the reason for retest as "Problem with identification or testing of the samples."

2. If rebleeding of the animals is not allowed by the owner, request a State animal health official to place the animals under quarantine until the circumstances are investigated.

3. Relay all available information to the Area Compliance Officer and direct him to initiate an official investigation immediately.

VIII. AREA COMPLIANCE OFFICER'S RESPONSIBILITIES

A. Follow procedures for preparing animal quarantine violation cases and complete a thoroughly documented case.

B. Have another VS employee accompany him during the investigation in order to furnish cross-affidavits when people interviewed refuse to sign an affidavit.

C. Be sure the case and affidavits contain the answers to: Who? What? When? Where? Why? and How?

IX. NVSL'S RESPONSIBILITIES

A. Upon notification by the AVIC, NVSL shall make arrangements to perform the necessary tests as soon as possible after arrival of the suspected samples.

B. After completion of the tests, NVSL will report the results by phone to the Assistant Deputy Administrator, Domestic Programs, who will notify the proper officials and determine if further action is warranted.

C. Prepare the samples and send them in an officially sealed package to a USDA-designated laboratory. (See paragraph XI-B for sealing instructions.)

D. NVSL shall not issue any written report of the test results on suspected blood samples unless specifically requested by the Office of the Assistant Deputy Administrator, Domestic Programs. The name of the test shall not be publicized on any written report.

E. NVSL will not release any information on suspected sample testing except to the Office of the Assistant Deputy Administrator, Domestic Programs. The Assistant Deputy Administrator's Office will inform the Regional Director and the AVIC. State animal health officials may obtain information from the AVIC.

X. REPORTING

The submitting laboratories will receive a notice from NVSL acknowledging receipt of samples. However, NVSL will not advise the submitting laboratories of the results of the presumptive tests.

When presumptive testing at NVSL finds suspicious samples, the submitting laboratory will be contacted regarding actions that will be taken on samples submitted from this source in the future. Future suspicious samples submitted from the same owner or veterinarian will be sent to NVSL under seal. (See paragraph XI-B for sealing instructions.)

Positive results of presumptive tests at NVSL will be reported to the Assistant Deputy Administrator for Domestic Programs who will report results to the Deputy Administrator of VS.

The Deputy Administrator's decision on actions to be taken on fraudulent submissions will be transmitted through channels to staff and line officials on a "need-to-know" basis.

NVSL will provide monthly, quarterly, and annual summaries of test results to the Regulatory Communications and Compliance Policy Staff for further distribution as regional and national summary totals only.

XI. USE OF OFFICIAL SEALS (RECOMMENDED SEALING METHOD)

A. Button seals should be used to seal containers used to ship blood samples that are suspected of being fraudulent and/or retest samples from animals involved in the investigation.



B. Procedure for packing and sealing the container used for shipping the samples:

1. Insert the properly identified tubes in the box.
2. Record the serial number of the button seal on the VS Form 10-4 and place form in the box.
3. Punch a hole through the latching flap and through the box where the flap inserts into the box and draw a heavy piece of string through the holes so the flap cannot be removed without removing the string. Put the two ends of the string through the holes in the button seal and tie two knots.

Unroll or flatten out the string so the top of the button seal will insert into the bottom portion. Cut the two ends of the string off leaving about 1/4 inch of string sticking out of the top of the seal.

4. Apply shipping label to the box and send it by an appropriate air courier service; e.g., Purolator, Federal Express, or similar firm.

XII. IMPLEMENTATION BY AVIC

A. Discuss the contents of this VS Memorandum with your cooperating State officials and solicit their support for immediate implementation of this program.

B. Discuss this surveillance program with the director or supervisor of each laboratory in your Area; solicit their support and set up the procedures they are to follow.

C. Receive a monthly memorandum from the Program Planning Staff containing the random sampling procedures for each slaughter plant that is to be sampled. Pass this information on to the laboratory director.

D. Set up a system for monitoring the submission of samples from all private laboratories.

E. Cost of shipping samples will be borne by VS.

A handwritten signature in cursive script, reading "J. K. Atwell". The signature is written in dark ink and is positioned above the typed name and title.

J. K. Atwell
Deputy Administrator
Veterinary Services

OGC/Legal Opinion/Information



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Federal Bldg.
Hyattsville, MD
20782

Subject: REAC Policy Regarding Contact With OGC

Date: DEC 19 1991

To: All REAC Personnel

The following establishes REAC policy concerning contact with the Office of the General Counsel (OGC). This policy is necessary to carry out communication with OGC uniformly and efficiently. The following procedures limit communication to specific channels in order to ensure those with policy or enforcement responsibilities are included. This policy will enable everyone in REAC to benefit from OGC's advice:

The Deputy Administrator, Regulatory Enforcement (RE) staff, and the Animal Care (AC) staff are REAC's primary liaison with OGC. The RE staff is responsible for issues related to enforcement. The AC Staff Director is responsible for AC program matters. The responsibility of the Deputy Administrator overlaps both enforcement and program areas and includes all other issues and special projects.

All communication between field operations and OGC shall be coordinated by the Sector Supervisor to the appropriate REAC headquarters staff for handling. This includes communication initiated in REAC as well as responses to direct requests from OGC for information or documents. The appropriate headquarters staff will make the actual contact or give approval for direct communications.

Deviations from this policy are allowed for program or enforcement emergencies and when preparing for administrative hearings. In an emergency, the Sector Supervisor and headquarters staff shall be notified as soon after the contact with OGC as practical, and, forward a copy of any documentation provided to OGC. Once an administrative hearing is scheduled and the OGC attorney has initiated contact with the witnesses, direct communication is permitted.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care





Subject:

Legal Representation by the Office of the
General Counsel (OGC)

Date: 6 JUL 1990

To:

SEE DISTRIBUTION

Thank you for your input to the Animal and Plant Health Inspection Service (APHIS) response to the General Counsel's memorandum regarding Legal Representation by OGC. Enclosed is the APHIS response which was signed by Dr. James Glosser on June 28, 1990.

Helene R. Wright

Helene R. Wright
Chief
Regulatory Analysis
and Development
Policy and Program Development

Enclosure

DISTRIBUTION:

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UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY

WASHINGTON, D. C.

REPORT OF THE
COMMISSIONER OF THE
BUREAU OF PLANT INDUSTRY
FOR THE YEAR 1911

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Legal Representation by the Office of the
General Counsel (OGC)

Jo Ann R. Smith
Assistant Secretary
Marketing and Inspection Services

We appreciate the opportunity to provide comments on the quality and timeliness of legal representation by OGC. The input provided is candid, and we intend it to be positive. We are interested in strengthening our harmonious working relationship with OGC.

Prior to the distribution of the questionnaire from the General Counsel, the Animal and Plant Health Inspection Service (APHIS) had initiated an effort to review workload and responsibility within the two agencies. The objective is to find ways to support strengthened staffing in OGC and reduce or modify workload to expedite or relieve excessive requests of OGC.

APHIS interacts with OGC on a daily basis. OGC has provided legal counsel and support for regulations; pre-decisional opinion; cooperative agreements; civil penalties; tort claims; legal opinions; correspondence; veterinary accreditation; withdrawal of approvals of foreign garbage handling facilities, bird quarantine facilities, and stockyards; claims collections; legislative reports; litigation; and training.

A consolidation of comments received from an APHIS-wide questionnaire follow each of the questions posed by the General Counsel.

1. Is OGC responding quickly enough on your legal matters?

In general the answer is no. In emergencies, oral comments are offered in lieu of written comments. We also recognize that delays also occur when incomplete or inadequate information is provided by the Agency. Some examples:

- Executive Correspondence requests for advice on the legal implications of responses to controlled correspondence have varied from a few minutes to a few weeks.
- Sometimes legal questions having potentially serious impact on program direction or administration have not been answered or the answer came too late. (While a prompt oral response was provided, the written legal opinion on the gypsy moth program took 15 months.)
- Implementation of some programs involving cooperative agreements has been delayed as a result of legal sufficiency review.

--OGC Regional Offices respond within 60 days on tort claims and employee claims sent to them for determination. However, OGC, Research and Operations, Washington, D.C., does not respond as quickly in these areas.

--The response time for the last issue involving personnel or safety was 18 weeks.

--The average review time for regulation changes has doubled in comparing the same time periods in 1989 and 1990. However, this varies among OGC Divisions.

2. Is OGC responsive (substantively) to your requests for oral and written advice?

OGC attorneys have been responsive to requests for oral advice. The advice may vary as it progresses from one attorney to the next on the same legal question. It is difficult to separate advice of a legal nature from policymaking advice. Advice has not been so forthcoming on the liability of supervisors for safety and environmental issues.

3. Is the quality of OGC's legal counsel satisfactory to you?

The quality of the legal counsel received has been satisfactory. However, the following are offered as areas of concern:

--Some OGC attorneys seem reluctant to pursue a case to the formal hearing stage. Program officials feel pressured to agree to prehearing settlements which do not fully satisfy program needs.

--There is a perceived tendency to apply a test of legal sufficiency to APHIS' administrative cases which is more appropriate to criminal cases.

--There are times when, in the review of APHIS regulations for legal sufficiency, OGC tends to restructure sentences to the point of becoming unwieldy, negating efforts to produce clear, "plain English" regulations.

--The OGC interpretation of the Regulatory Flexibility Act seems more stringent than that of the Small Business Administration, which enforces the Act.

--There is a lack of uniformity of decisions concerning tort claims between Regional OGC offices.

4. Are there significant backlogs or problems in any particular area? If so, please describe.

Yes, there are significant backlogs in processing violation cases, regulation review, and tort and employee claims. Examples follow:

- The Regulatory Division has approximately 113 animal and plant quarantine, Swine Health Act, veterinary accreditation, and U.S. Code violation cases pending the drafting of formal complaints. The Marketing Division has some 222 Animal Welfare, Horse Protection, and Veterinary Biologics violation cases pending the drafting of formal complaints. Some of these cases have been referred since December 1988. These figures do not take into account all those cases still pending at some stage beyond the issuance of the formal complaint.
- Regulation review time doubled in comparing the first half of fiscal year (FY) 1989 with FY 1990. Almost 25 percent of the regulations sent to OGC for review remained for more than 30 days; over 11 percent remained for over 90 days.
- Some tort claims from 1986 are now being adjudicated. Tort claims from APHIS' emergency programs such as grasshopper are still pending from 1985, 1986, and 1987.

There have also been delays in reviewing personnel and safety issues (e.g., management of AIDS exposures, review of directives, medical monitoring programs). APHIS has also experienced delays in implementing projects involving cooperative agreements.

5. Does OGC coordinate sufficiently with you?

OGC coordination efforts are adequate. However, APHIS may be able to make better use of its resources if OGC would provide for regular consultations to review respective priorities regarding pending Agency requests.

6. Does OGC adequately anticipate your legal needs and provide helpful counsel and/or preventive measures?

Pre-decisional advice would be helpful to the Agency generated both from Agency concern and OGC consultation.

OGC has provided some advice to the Agency (e.g., when proposed regulatory changes can be discussed with the public). We believe the current legal workload of OGC is such that we cannot expect them to anticipate our future legal needs at this time.

7. Do you believe that additional attorneys or paralegals would be necessary or desirable to service your needs properly?

Yes, OGC needs more legal staff. The attorneys need to be familiar with the National Environmental Policy Act and Freedom of Information Act. However, APHIS believes other options, in addition to hiring additional personnel, should be explored as well. Retention of attorneys once they have become experienced in USDA affairs needs to be a priority consideration. Reducing the number of areas in which OGC involvement is required may improve OGC support as well (see proposals under #9).

- a. How many additional attorneys or paralegals do you believe are required to handle your work?

APHIS was unable to determine a specific number. However, any additional attorneys hired should be provided adequate clerical support and sufficient workspace to effectively serve the Agency.

- b. What specific matters should they be working on?

Violation cases; regulations review; tort claims, employee claims, and training for offices that handle these claims; and legislative work.

- c. Are they needed in field locations or Washington?

Washington, although the potential advantages of placing some attorneys at field locations should be explored.

8. Are there any areas or projects where OGC is not currently providing legal services (or only a minimal level of service) that you believe require or could benefit from additional legal input?

The following should be considered:

--OGC should provide pre-decisional advice on the legal feasibility of initiatives or changes before time and effort is expended to prepare a docket in final form.

--Timely written responses to legal inquiries.

--Innovative thinking to assist APHIS in finding ways to carry out programs effectively.

9. Do you have any other thoughts or suggestions to improve the delivery of legal services?

The following are provided:

--Low-priority dockets need to have some chance of being reviewed in a timely manner (e.g., Docket 89-105 has been in OGC since 08-17-89, Docket 88-187 since 07-24-89).

- To assist agencies in coordinating with OGC, OGC should provide a listing of OGC workload and status reports on a regular basis for Agency prioritization.
- Assignment of an attorney and/or paralegal to APHIS to adjudicate claims.

In addition, we offer the following proposals to reduce the OGC workload:

- Waive OGC review of routine documents published in the Federal Register, such as notices of the receipt of permit applications, notices of the availability of environmental assessments and finding of no significant impact, and routine changes to regulated areas.
- Current cooperative agreements undergo at least a three-tiered review in OGC. If this review process could be streamlined, it would minimize delays in providing legal counsel and would reduce the amount of resources OGC expends in reviewing these agreements.
- The continuing backlog of regulatory violation cases pending action in both the Marketing and Regulatory Divisions of OGC has a debilitating effect on APHIS' credibility as an effective regulatory agency. We believe that much of this backlog can be eliminated by implementation of the proposals outlined below:

Extend the application of stipulation procedures in lieu of formal complaints.

For several years the APHIS Plant Protection and Quarantine (PPQ) program has effectively applied stipulation procedures (frequently inappropriately referred to in PPQ as "spot fines") with regard to fruits, vegetables, and meat products illegally brought into the United States by arriving land, sea, and air passengers. More recently, the practice has been extended to violations of garbage handling requirements at air and sea terminals. We believe that these procedures could be further extended to apply to a wide range of violations of animal quarantine, animal welfare, and horse protection violations as well.

During the past two years, APHIS has done some preliminary work on this concept and informally discussed it with various OGC representatives. While some in OGC encourage this approach, others have indicated strong opposition. Until now we have hesitated to pursue the idea much further due, mainly, to our perception of OGC opposition.

Briefly described, the proposal is as follows:

- In conjunction with OGC and appropriate program officials, APHIS would develop written guidelines for violations in the various programs which could be settled by stipulation.

- The guidelines would prescribe the conditions under which an offer of stipulation could be made and the amount of settlement appropriate for various kinds of violations.
- After a full investigation by APHIS' Regulatory Enforcement investigators, the case reports would be reviewed for sufficiency of evidence by Regulatory Enforcement staff specialists. The staff specialists would then apply the appropriate guidelines and issue a document to the violator offering the opportunity to settle the violation by payment of a prescribed reduced fine. In those cases where the violator fails to settle within a prescribed time period, action to issue a formal complaint would be initiated.

Revise current practice to allow APHIS' Regulatory Enforcement staff specialists to initially prepare a draft complaint in conjunction with their review of the investigative file.

Initially, this would be limited to the less complicated cases and would be subject to legal review by OGC attorneys prior to issuance. In time, as staff specialists gained experience in the legal requirements of formal complaints, the need for OGC prior review could be withdrawn.

We believe implementation of this process would free the OGC attorneys to devote their attention to those cases which would require a formal hearing.

- To reduce the burden of small tort claims (less than \$2,500) on Regional OGC offices, APHIS requests that OGC delegate to the APHIS Field Servicing Office (FSO) the authority to determine, negotiate, and settle these claims under the Federal Tort Claims Act and the Military Personnel and Civilian Employees Claims Act.

Currently, all APHIS and Agricultural Marketing Service tort and employee claims are initially reviewed by an FSO Claims Specialist. The Claims Specialist works with the claimant or the claimant's attorney until the claim has been fully substantiated. The Claims Specialist writes an administrative report which includes a recommended determination.

The OGC attorney reviews the claim and makes a determination. FSO statistics show that, of the 96 claims under \$2,500 processed in 1989, the OGC attorney concurred with the recommendation of the Claims Specialist in 93 cases. As FSO reviews cases from each of the OGC Regional Offices, it is evident that determinations of like cases vary between them. Clearly, uniformity of decisions can more readily occur if all determinations are made by one office.

In 1989, FSO received determinations on claims under \$2,500 an average of 54 days from the date the administrative report was sent to OGC. If the claim was allowed, the claimant could expect to wait another three to four weeks before receiving the check. Understandably, many claimants experience a great deal of frustration with our administrative process, as do FSO Claims Specialists and OGC attorneys.

FSO's Standard of Service for processing tort claims and employee claims is currently 30 days from the time of receipt. On the average, FSO processes them within 15 days. We anticipate that determinations on the majority of claims under \$2,500 can be made within seven to ten days of receipt of the claim.

Claimants who are dissatisfied with the determination of their claim are entitled to request reconsideration. Currently, the attorney who made the initial determination is the same attorney who will reconsider the claim. In our experience, few determinations are overturned. Under this proposal, reconsiderations will be made by the OGC attorney rather than the FSO Claims Specialist who made the initial determination. This will lend further integrity to the appellate process, as well as provide quality control to the work done by FSO Claims Specialists.

We believe that adjudication authority will coincide with the authority FSO Claims Specialists have to determine negligence on the part of the third parties who damage government property, and bill them for such damage. Given this authority, it seems FSO could also have authority for adjudicating tort and employee claims.

In connection with the above proposal to authorize APHIS, FSO to adjudicate claims under \$2,500, another suggestion is to increase the Regional OGC's authority to a level deemed necessary to equalize the caseload between the Regional and Washington, D.C., OGC offices.

Thank you again for the opportunity to respond. We look forward to continuing a mutually constructive relationship with OGC and we would welcome the opportunity to discuss this information with OGC.

James W. Glosser
Administrator

Response to General Counsel Survey

JUN 22 1990

Helene Wright
Chief
Regulatory Analysis and Development

The success of the many and varied functions of Regulatory Enforcement and Animal Care (REAC) depends to a great extent on the quality and timeliness of legal counsel and support from the Office of the General Counsel (OGC). Since we are also mindful of the need to maintain harmonious working relationships with our only source of legal counsel, we tend to be somewhat hesitant to voice our criticisms of their performance. However, we welcome the opportunity to comment on the questions posed by the General Counsel. We hope that the candor of our remarks will be viewed in a positive vein.

The comments that follow are keyed to the nine questions posed by the General Counsel and represent a consolidation of comments from REAC Staff Specialists who have frequent dealings with representatives of OGC.

1. Is OGC responding quickly enough on your legal matters?

The nature of REAC activity is such that there is frequent need for counsel in identifying the legal implications of the regulatory actions we must take. In the past, legal questions having potentially serious impact on program direction or administration were addressed directly to the appropriate OGC Division from either the Regulatory Enforcement or the Animal Care Staff. We found that these requests were too often not responded to at all or that the response was too late to be of any use in dealing with the particular problem at hand. In recent months we have established an internal policy of preparing all such requests for the signature of the Administrator. We hope that this practice will help to focus OGC attention on those issues critically in need of written legal opinions.

An area in which USDA and APHIS has been the subject of severe criticism from the general public, State cooperators, industry groups, and animal welfare organizations has to do with the length of time involved in prosecuting violations of program regulations. This is a critical area in which the credibility of APHIS's ability to carry out its regulatory role is in serious jeopardy. This will be discussed in more detail in paragraph 4 below.

2. Is OGC responsive (substantively) to your requests for oral or written advice?

For the most part, OGC attorneys have been responsive to requests for oral advice. Unfortunately, the nature of the advice at times differs from one attorney to the next on the same legal question.

Responsiveness to requests for written advice has not been favorable.

3. Is the quality of OGC's legal counsel satisfactory to you?

The quality of counsel received from the more experienced attorneys has been generally satisfactory. However, the turnover rate of attorneys seems to be quite high and the limited number of experienced attorneys are probably overtaxed to the point where the quality of their counsel must suffer. We also find that some attorneys are extremely reluctant to pursue a case to the formal hearing stage. These attorneys often press program officials to agree to prehearing settlements which do not satisfy program needs. Usually, but not always, these are the less experienced attorneys who are probably most in need of the courtroom experience.

One area of concern is that perhaps there is a tendency in OGC to apply a test of legal sufficiency to our administrative cases which is more appropriate to criminal cases. It is our understanding that the "proofs" needed in administrative cases are not or should not be as demanding as in criminal cases.

4. Are there significant backlogs or problems in any particular areas?

There are a few written requests for legal opinions which have never been responded to. The time allowed for preparing this questionnaire was not sufficient to research the specific issues.

As of June 5, 1990, the Marketing Division had some 222 Animal Welfare, Horse Protection, and Veterinary Biologics violation cases pending the drafting of formal complaints. These are cases which had been referred to OGC for the preparation of complaints since December 1988 and which are recorded in the Regulatory Enforcement Compliance Investigations Tracking System (CITS) data base. In addition, there are an undetermined number of cases still pending which were referred to OGC prior to December 1988.

As of June 1, 1990, the Regulatory Division had approximately 113 animal and plant quarantine, Swine Health Act, veterinary accreditation, and U. S. Code violation cases pending the drafting of formal complaints. Here too, there are an undetermined number of cases which had been referred prior to December 1988.

The figures given above do not take into account all those cases still pending at some stage beyond the issuance of the formal complaint. Once the complaint is issued, the attorney's work is by no means completed. There is considerable legal work involved in these cases leading up to and subsequent to the formal hearing.

We have no way of knowing the extent of competition for the attorney's attention that comes from other agencies. However, it is clear that the workload is monumental and probably very discouraging to the OGC staff.

At times we have been told that some delays in responding to APHIS needs have resulted from insufficient clerical help in OGC. This is an area that should probably be examined.

5. Does OGC coordinate sufficiently with you?

For the most part, REAC staff specialists report that OGC coordination efforts are adequate at the working attorney level. Some staff specialists reported less than adequate coordination by higher levels within OGC.

6. Does OGC adequately anticipate your legal needs and provide helpful counsel and/or preventive measures?

At the present time it appears that OGC is "behind the power curve" and not able to deal promptly with current legal work, let alone anticipate our legal needs.

7. Do you believe that additional attorneys or paralegals would be necessary or desirable to service your needs properly?

Employing additional attorneys and/or paralegals and clerical help may be one answer to the current workload problems. However, we believe that other options should be thoroughly explored as well. Ways of retaining attorneys once they have become experienced in USDA affairs need to be devised and applied. A full staff of attorneys and paralegals experienced in APHIS programs and tested and confident in the hearing room might offset the need for additional staff.

APHIS has some additional proposals which, we believe, would offset to some extent the need for more OGC staff. These will be outlined in more detail in item 9.

a. How many additional attorneys or paralegals do you believe are required to handle your work?

Estimates by various REAC staff members range as high as a combination of 15 attorneys/paralegals/clericals. It is really difficult to judge since we do not know the extent of work currently being done for other agencies.

b. What specific matters should they be working on?

If employed, they should be assigned to reduce the backlog of violation cases that has existed for years. Senior attorneys could then be freed to provide prompt response to APHIS needs for written legal opinions.

c. Are they needed in field locations or in Washington?

Probably they should be located in Washington. However, the possible advantages of placing attorneys at some field locations should be explored.

b. Are there any areas or projects where OGC is not currently providing legal services (or only a minimal level of service) that you believe require or could benefit from additional legal input?

Until the level of service on current needs is improved, it is not particularly useful to contemplate additional service we might need.

9. Do you have any other thoughts or suggestions to improve the delivery of legal services?

As indicated in question 4 above, the continuing backlog of regulatory violation cases pending action in both the Marketing and Regulatory Divisions of OGC has a debilitating effect on APHIS's credibility as an effective regulatory agency. We believe that much of this backlog can be eliminated by implementation of the proposals outlined below:

a. Extend the application of stipulation procedures in lieu of formal complaints.

For several years the APHIS Plant Protection and Quarantine program has effectively applied stipulation procedures with regard to fruits, vegetables, and meat products illegally brought into the United States by arriving land, sea, and air passengers. More recently, the practice has been extended to violations of garbage handling requirements at air and sea terminals. We believe that these procedures could be further extended to apply to a wide range of violations of animal quarantine, animal welfare, and horse protection violations as well.

During the past 2 years, REAC has done some preliminary work on this concept and informally discussed it with various OGC representatives. While some in OGC encourage this approach, others have indicated strong opposition. Until now we have hesitated to pursue the idea much further due, mainly, to our perception of OGC opposition.

Briefly described, our proposal, is as follows:

1. In conjunction with OGC and appropriate program officials REAC would develop written guidelines for violations in the various programs which could be settled by stipulation (frequently inappropriately referred to in PRQ as "spot fines").
2. The guidelines would prescribe the conditions under which an offer of stipulation could be made and the amount of settlement appropriate for various kinds of violation.
3. After a full investigation by Regulatory Enforcement Investigators, the case reports would be reviewed for sufficiency of evidence by Regulatory Enforcement Staff Specialists. The staff specialists would then apply the appropriate guideline and issue a document to the violator offering the opportunity to settle the violation by payment of a prescribed reduced fine. In those cases where the violator fails to settle within a prescribed time period, action to issue a formal complaint would be initiated.

b. Revise current practice to allow Regulatory Enforcement staff specialists to initially prepare a draft complaint in conjunction with their review of the investigative file. Initially, this would be limited to the less complicated cases and would be subject to legal review by OGC attorneys prior to issuance. In time, as staff specialists gain experience in the legal requirements of formal complaints, the need for OGC prior review could be withdrawn.

We believe that implementation of this process would free the OGC attorneys to devote their attention to those cases which would require a formal hearing.

Joan M. Arnoldi

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and
Animal Care

APHIS:REAC:AJWilson:maj:ext.436-6491:6/22/90

Department of Justice
Washington, D.C. 20530

TO: Honorable Bob Bergland
Secretary of Agriculture
Department of Agriculture

FROM: Larry Simms
Deputy Assistant Attorney General
Office of Legal Counsel
Department of Justice

SUBJECT: Legal Memorandum dated

22 AUG 1979

Titled: Animal Welfare Act, 7 U.S.C. § 2131

The Attorney General has directed the Office of Legal Counsel to undertake the publication of selected opinions of this Office. We believe the attached opinion addressed to you is appropriate for publication. Unless we hear from you to the contrary within ten days, we shall assume that you have no objection to its publication.

This Office will undertake review of the opinion for accuracy of citations, etc., and will subsequently prepare an appropriate headnote. In instances involving questions of conflict-of-interest and ethical matters, the opinion will be sanitized to delete identifying details. Minor editorial revisions may also be made.

Department of Justice

Washington, D.C. 20530

Honorable Bob Bergland
Secretary of Agriculture
Department of Agriculture
Washington, D.C. 20250

1025-432610
APHIS

22 AUG 1979

22 AUG 21 19:23

Dear Mr. Secretary:

This is in response to your request of March 28, 1979 for the opinion of the Department of Justice on the scope of coverage of the Animal Welfare Act, 7 U.S.C. § 2131 et seq. Specifically, you wish to know if the Act applies to activities which are entirely intrastate. The occasion for your raising this question is the recent refusal by the United States Attorneys for the Eastern District of Pennsylvania and the Eastern District of Illinois to prosecute cases brought to them by your Department on grounds that the Act extends only to interstate transactions. For reasons stated hereafter, we believe that Congress intended the Act also to cover purely intrastate activities otherwise falling within its provisions. 1/

The Animal Welfare Act was enacted in 1966 as Pub. L. No. 89-544, 80 Stat. 350. As stated in its preamble, its purpose was "to prevent the sale or use of dogs and cats which have been stolen, and to insure that certain animals intended for use in research facilities are provided humane care and treatment," by regulating certain activities "in commerce." This term was defined in § 2(c) of the Act as follows:

The term "commerce" means commerce between any State, territory, possession, or the District of Columbia, or the Commonwealth of Puerto Rico and any place outside thereof; or between points within the same State, territory, or possession, or the District of Columbia, or the Commonwealth of Puerto Rico, but through any place outside thereof; or within any territory, possession, or the District of Columbia.

1/ Nothing in this letter should be viewed as expressing our views on any question other than the narrow legal issue regarding the general application of the Animal Welfare Act to purely intrastate activities.

In 1970, the definition section of the Act was amended. The definition of "commerce" in § 2(c) was expanded to include "trade, traffic . . . [and] transportation," as well as "commerce." A new § 2(d) added a new definition for "affecting commerce":

The term "affecting commerce" means in commerce or burdening or obstructing or substantially affecting commerce or the free flow of commerce, or having led or tending to lead to the inhumane care of animals used or intended for use for purposes of research, experimentation, exhibition, or held for sale as pets by burdening or obstructing or substantially affecting commerce or the free flow of commerce.

According to the House Report accompanying the 1970 bill, this addition to the Act was

intended to broaden the authority under the Act to regulate persons who supply animals which are intended for use in research facilities, for exhibition, or as pets.

H. Rep. No. 1651, 91st Cong., 2d Sess. 9 (1970).

More importantly, subsequent sections of the Act regulating specific activities were revised to cover activities "affecting commerce," rather than simply those "in commerce." See, e.g., § 4, 7 U.S.C. § 2134 (transportation of animals); § 11, 7 U.S.C. § 2140 (identification of animals for transportation). We believe these amendments reflect Congress' intention to expand the Act's coverage beyond those activities which are "in commerce" in the strict sense to reach activities which merely "affect" interstate commerce. This expanded coverage in turn reflects Congress' determination that certain specified activities have a sufficient effect on commerce among the States to require regulation, even if they take place entirely within one State.

The 1976 Amendments to the Animal Welfare Act confirm Congress' intent that the Act should extend to intrastate activities. Its preamble, § 1(b), 7 U.S.C. § 2131(b), was revised to incorporate the specific congressional findings underlying the regulatory system imposed by the Act. It now reads in pertinent

part as follows:

The Congress finds that animals and activities which are regulated under this Act are either in interstate or foreign commerce or substantially affect such commerce or the free flow thereof, and that regulation of animals and activities as provided in this Act is necessary to prevent and eliminate burdens upon such commerce and to effectively regulate such commerce . . . [emphasis supplied].

If there had been any doubt of the coverage of the Act prior to 1976, this amended preamble makes clear that all activities regulated under the Act, including those confined to a single State, are governed by its provisions.

In further clarification of this point, the definition now found in 7 U.S.C. § 2132(c) of "commerce" itself was revised to consolidate former §§ 2(c) and 2(d), so that the term "commerce" as used in the Act now includes both traffic between States and traffic which merely "affects" such interstate traffic generally:

The term "commerce" means trade, traffic, transportation, or other commerce --

(1) between a place in a State and any place outside of such State, or between points within the same State but through any place outside thereof, or within any territory, possession, or the District of Columbia;

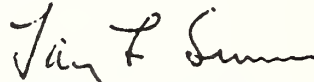
(2) which affects trade, traffic, transportation, or other commerce described in paragraph (1).

We believe that this provision, read in the context of the other provisions of the Act and its legislative history, must be construed to provide two distinct definitions of "commerce" for purposes of the Act's coverage. 2/ Any other construction

2/ If Congress had used the conjunction "and" between subparagraphs (1) and (2), it would be at least arguable that it would not have succeeded in carrying out its plain intent to expand coverage of the Act to purely intrastate activities which affect interstate commerce. Congress, however, did not use "and" to conjoin subparagraphs (1) and (2) but rather used no connective word.

would make meaningless, or at best redundant, the 1970 and 1976 amendments to the Act. We are, therefore, of the opinion that the Animal Welfare Act applies to activities which take place entirely within one State, as well as to those which involve traffic across State lines.

Sincerely,

A handwritten signature in dark ink, appearing to read "Larry E. Simms". The signature is fluid and cursive, with the first name "Larry" and last name "Simms" clearly distinguishable.

Larry E. Simms
Deputy Assistant Attorney General
Office of Legal Counsel

cc: William P. Tyson, Acting Director
Executive Office for United States Attorneys

Administrative/Travel/Personnel/EEO/Trng./S&H



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject:

Use of Rental Cars

Date: **MAR 6 1992**

To:

REAC Employees

As we attempt to prioritize our budgeting needs for FY 1992, it is apparent that we need to introduce some additional spending controls early in this fiscal year.

I would like to reduce the use of rental cars by REAC personnel. Therefore, **NO RENTAL CARS** will be approved unless directly utilized for program work, i.e., inspections or investigations when you do not have access to a GOV.

I appreciate your cooperation in this difficult year.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

RE
AC } PLS. make copies and distribute
RMS } To All your employees.



APHIS—Protecting American Agriculture



1918



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Federal Building, Room 558
Hyattsville, Maryland 20782

Subject: Hiring Freeze

Date: MAR 5 1992

To: REAC Management Team

This year there has been increased emphasis on the importance of managing our staff years, and operating within our ceiling limitation. Over the last months we have been monitoring our staff year situation and developing end-of-year projections based on personnel on board. The most recent staff year analysis indicates REAC is in a situation where at the end of the fiscal year, we will end up over our approved staff year ceiling. Filling any of our current vacancies will only exacerbate the problem.

Until further notice, I am imposing a freeze on all hiring. This includes all vacant positions, except for those for which you have made a selection and received a confirmed effective date from the Resource Management Staff. Once we develop additional figures and projections, future hiring this fiscal year, if any, will be decided on a case-by-case basis by this office.

I am sorry to have to deliver such bleak news. We will keep you informed of the situation as we progress further into the fiscal year, and will discuss this more at the Management Team Meeting at the end of the month.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and
Animal Care





United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject:

REAC Occupational Safety and Health and Animal
Exposure Surveillance Program (OSH/AESP) Manual

To:

REAC Management Team

Date:

JAN 31 1992

Copies of the manual on the above subject were recently distributed to all Sectors without some important instructions concerning their distribution to all REAC employees.

Enclosed in this memo is an "Acknowledgement of Receipt" Form, which must be completed and returned to me upon receipt of each REAC employee's personal copy of this manual.

Please note paragraph II on page 2 of the manual. Employees are not to have their serum collected at this time. We have not yet identified a laboratory to perform the necessary testing on serum. When arrangements have been made to perform such testing, you will be notified. Please ensure that all employees are aware that they are not to have their serum collected until advised to do so.

Please distribute the following to each of your employees:

1. The "REAC Occupational Safety & Health & Animal Exposure Surveillance Program" Manual (which you already have or will be receiving soon).
2. A copy of the "Acknowledgement of Receipt" Form.
3. A copy of this "Memo."

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

Enclosure



"ACKNOWLEDGEMENT OF RECEIPT" FORM

SUBJECT: Receipt of REAC Occupational Safety and
 Animal Exposure Surveillance Program
 Manual (OSH/AESP)

RETURN TO: Joan M. Arnoldi
 Deputy Administrator, REAC
 6505 Belcrest Road, Room 558-FB
 Hyattsville, MD 20782

I hereby acknowledge receipt of my personal copy of the manual
entitled "Occupational Safety and Health and Animal Exposure
Surveillance Program."

Printed or Typed Name: _____

Signature: _____

Date: _____



United States
Department of
Agriculture

Animal and
Plant Health
Inspection Service

Subject: APHIS Employees' Safety Responsibilities
While Conducting Regulatory Inspections

Date: December 9, 1991

To: See DISTRIBUTION

Loss of life was experienced recently at a commercial poultry processing plant in North Carolina, making national headlines. The loss of life may have been prevented or reduced had fire safety inspections been conducted.

Assistant Secretary Jo Ann Smith and I are deeply concerned and question what could APHIS do to prevent tragedies of this nature. We fully recognize that APHIS has no regulatory responsibility in the area of fire safety. However, we believe APHIS has a moral obligation to do whatever we can to prevent this type of accident from occurring in the future.

In an effort to help APHIS discharge its moral obligation, I am enclosing a memorandum for you to send to all employees in your program having responsibility for regulatory inspections. The memorandum asks them to report unsafe conditions that are observed while conducting inspections to building/plant owners.

Thanks for helping APHIS support a safe working environment for all workers.

Robert Melland
Administrator

Enclosure

DISTRIBUTION:

Glen Lee, Deputy Administrator, PPQ, Washington, DC
Lonnie King, Deputy Administrator, VS, Washington, DC
✓ Joan Arnoldi, Deputy Administrator, REAC, Hyattsville, MD
Terry Medley, Director, BBEP, Hyattsville, MD



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject: APHIS Employees' Safety Responsibilities
While Conducting Regulatory Inspections

Date: December 9, 1991

To: All Employees Participating in Regulatory Inspections

The Animal and Plant Health Inspection Service (APHIS) continues to be greatly concerned about the safety and health of all employees, Federal and non-Federal, in facilities where we conduct business. The recent, tragic loss of life to fire at a food processing plant in Hamlet, North Carolina, was preventable. It has caused APHIS' and the Department's management to ask: Are we doing all that we can to ensure that tragic accidents such as this are prevented?

Even though we understand that APHIS employees performing regulatory inspections have no safety regulatory authority at commercial facilities, we do believe they have a moral obligation to identify and report obvious unsafe conditions.

In performance of your duties as Federal inspectors and regulators in slaughterhouses, animal care establishments, veterinary biological production laboratories, and other facilities utilizing animal products, YOU, as an APHIS employee, may observe conditions that pose potentially disastrous consequences if not corrected. While APHIS has no regulatory responsibility for the safety of non-Federal employees, we have a moral obligation to report safety hazards such as blocked fire exits or other workplace hazards to the owners or operators of the establishments where we perform our functions. I encourage you to do so. Let's help support a safe work environment for all workers.

Thank you for your support.

Robert B. Melland
Administrator





United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Subject: REAC Safety, Health, Wellness, and
Environmental Representation

Date: FEB 14 1990

To: REAC Personnel

In accordance with the Animal and Plant Health Inspection Service's Safety and Health Manual, Regulatory Enforcement and Animal Care (REAC) is appointing a Safety and Health Council and five Collateral Duty Safety and Health Officers.

The Safety and Health Council will consist of five members (one in each Sector) who will monitor the Sector's Safety, Health, Wellness, and Environmental Program. Each member will represent a REAC Sector and all its personnel. The Council will have equal representation of management (GM-13 or above) and nonmanagement employees. The Council will also have equal representation of Regulatory Enforcement (RE) and Animal Care (AC) personnel.

Council members will serve overlapping terms. The term will be for 3 years except when the Council is initially organized. The first Council will have one member with a 1-year term, two members with 2-year terms, and two members with 3-year terms. For example, when a RE management member goes off the Council, replacement will be by AC nonmanagement. This system will alternate the imbalance between management/nonmanagement and RE/AC.

The Council members will be appointed by the Deputy Administrator. Each REAC Sector location will recommend one management and one nonmanagement person.

The REAC representative to the APHIS National Council will be a nonvoting member of the REAC Council.

There will also be one Collateral Duty Safety and Health Officer (CDSHO) at each Sector location. It is preferred that the CDSHO be located at the Sector office, but it is realized that this may not be possible in some Sectors. A CDSHO is a REAC person assigned safety, health, wellness, and environmental responsibilities directly related to human health and safety. Because of training requirements and responsibilities, CDSHO appointments are long standing and may require 10 percent of their duty time. These duties will be a separate element in the employees' performance standards.

The CDSHO will be appointed by the Deputy Administrator. Each appointed CDSHO will be certified in writing by the Administrative Services Division (ASD), Safety, Health, and Environmental Section (SHES).



The Council and the CDSHO's will hold joint meetings at least twice a year. AC and RE Sector Supervisors will coordinate selections of Council members and CDSHO's in each Sector. Please submit your selections to me by March 15, 1990.

If you have any questions, contact Dr. Walter A. Christensen, APHIS National Council member.



for Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and
Animal Care

Regulatory Enforcement Investigators'
Official Duty Stations and the Use of
Government-Owned Vehicles (GOV)

FEB 16 1992

All Investigators
Regulatory Enforcement, REAC

For quite some time, there has been a lot of confusion concerning "official duty stations" and the proper use of an assigned GOV.

This problem has reached such proportions that APHIS has designated a work group to sort it out and make policy recommendations to the Administrator.

In the interim, due to the unique operational procedures Regulatory Enforcement functions under, I feel that we should establish very clear guidelines for you to use. If, when the Agency establishes formal and official procedures to be followed and ours are compatible, we will continue to use them; if not, we will change at that time.

Presently, all our GS-09 Field Investigators' official duty stations are their homes. Some of our GS-11 Senior Investigators' official duty stations are their homes and some are assigned to an office. Effective March 8, 1992, all RE Investigators' official duty stations will be their homes, with three exceptions. They are: W. D. McFather, Florida; Jacqueline Freeman, Texas; and a Senior Investigator (to be named) for California. These exceptions are due to workload and number of Investigators supervised (this does not exclude their working in the field).

I am aware that most of you have office space you utilize with some frequency. This should continue. When an APHIS program, i.e., VS, PPQ, is willing to furnish office space to RE at no cost in order to maintain close contact, we should remain sensitive to their needs and desires and utilize that space.

The following procedures should be followed at all times. It should be noted that these procedures are not based on my wishes or personal policy, but Federal laws, regulations, and policies.

When you plan to go into your office for the day and return home with no planned field trip(s), drive your POV, not your GOV. Travel to and from the office at your own expense. Do not charge mileage. Spend a full 8-hour working day at the office. Do not include drive time to and from the office as part of your work day.

If you have any questions, contact your respective Sector Supervisor for guidance.

A handwritten signature in black ink, reading "Ron D. Stanley". The signature is written in a cursive, slightly slanted style. The first name "Ron" is followed by a middle initial "D" and the last name "Stanley".

Ron D. Stanley
Assistant Deputy Administrator
Regulatory Enforcement

cc:

J. M. Arnoldi, REAC, Hyattsville, MD
A. R. Christian, REAC, Hyattsville, MD
E. E. Crooks, REAC, Hyattsville, MD
T. Schneider, REAC, Hyattsville, MD

APHIS:REAC:RDStanley:maf:ext.436-6491:2/25/92



United States
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Animal and
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Inspection
Service

Federal Building, Room 560
Hyattsville, Maryland 20782

Subject: Timekeeping Guidelines for Luncheons

Date: FEB 11 1992

To: REAC Headquarters Personnel

A number of people have asked for clarification regarding the timekeeping procedures that should be used to show the lunch period when attending "official luncheons" (i.e., for retirement or employee transferring). The following guidelines are now in effect:

*You must still show a minimum 1/2 hour as a lunch break. In addition to that, you will be granted up to 1 hour of official time to participate in the luncheon activities. If you are gone more than 1 1/2 hours, you will have to take annual leave, credit hours, or adjust your workday to make up the time. (Note: On the Time and Attendance Log, do not code the additional 1 hour as Other (Administrative Leave,) code 66. It will be part of your Regular Time, code 01.

*This policy applies only to REAC luncheons. If you choose to attend luncheons being held by other activities, no additional time will be granted. You must sign out for the entire time you are not in work status. Any deviation from this can be approved only by the Deputy Administrator.

If you have any questions, feel free to contact Terry Schneider of the Resource Management Staff.

Morley H. Cook
Acting Deputy Administrator
Regulatory Enforcement and
Animal Care



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Subject:

Managing and Monitoring Tour of Duty
for REAC Personnel

Date: JAN 28 1992

To:

REAC Management Team

This is to remind all Sector Supervisors of the importance of monitoring closely the activities of the First 40 workweek authorized in a memorandum dated January 21, 1992. In order to prevent potential abuse and have satisfactory work production, it is essential that the Sector Supervisor give added attention to observing and reviewing employee work performance when a compressed work schedule is employed.

Any serious infractions of the authorized workweek must be reported to the REAC Deputy Administrator.

Morley H. Cook
Associate Deputy Administrator
Regulatory Enforcement and
Animal Care





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Subject: Managing Tour of Duty
for REAC Field Personnel

Date: January 21, 1992

To: REAC Management Team

A draft memorandum dated December 16, 1991, that concerned the Management Tour of Duty for REAC Field Personnel has generated appropriate comments. The comments were considered in providing the authority to use a more flexible workweek in carrying out assigned areas of responsibility in REAC. In connection with this subject, a memorandum was issued to all REAC employees on January 25, 1991. The January 25, 1991, memorandum remains in effect with the exception of the following approved procedures that replace Section A, under Part I. Scheduling.

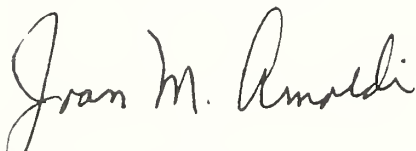
You are now authorized to manage the First 40 Hour tour of duty using the following guidelines. The basic workweek will consist of 40 hours without the requirement for specific days and hours designated within the Sunday through Saturday administrative workweek. The basic workweek must be designated in advance of the start of the administrative workweek (i.e., before 12:01 a.m. Sunday), and must include no more than 6 (preferably 5) of the 7 days. A minimum of 1 day of the week will be designated as the employee's day off. With this authority, the Sector Supervisor would now have the option of approving a 4-day workweek (consisting of 40 hours) and a 5-day workweek (consisting of 40 hours) during a pay period, or other similar combinations, as long as each week totals at least 40 hours.

All work performed by an employee within the first 40 hours is considered regularly scheduled work for premium pay and hours of duty purposes. Any additional hours of officially ordered or approved work over 40 must be paid as overtime. In addition, all employees covered under the Fair Labor Standards Act (FLSA), and employees who are exempt from FLSA but make less than a GS-10, step 1 (i.e., those employees up through GS-9, step 4) must be paid at the overtime rate for those hours worked that exceed 8 in a day. Currently, the only field employees in REAC that are covered under FLSA are Investigators up through GS-7, and Animal Care Inspectors up through GS-8.

When utilizing this method of arranging the workload, it is necessary the scheduled "off" days are designated in writing by the field employee prior to the workweek, and submitted to the Sector Supervisor for his/her approval. The hard copy is mandatory in the event that later claims for entitlements, overtime, etc., are initiated and require resolution. Also, care needs to be taken in monitoring the annual leave so that proper personnel coverage is in place during time of frequent absence, such as the holiday season.



With this change in managing the First 40 tour, it is recommended that a careful review of the work performance be maintained so that timeliness and efficiency are not compromised.

A handwritten signature in dark ink, reading "Joan M. Arnoldi". The signature is written in a cursive style with a large, looping initial "J".

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and



Subject: REAC Employee Training and Education

Date: OCT 18 1991

To: REAC Management Team

Last year in May, the Animal Care, South Central Sector, asked and received permission to pilot a program involving exotic hoofed stock in their Sector. Recruitment and Development (R&D) monitored the program for possible future use in nationwide training. It proved to be a good program but was very time consuming for the personnel at the Sector Office to develop and implement.

Since that time, it appears that other Sectors are using Sector meetings for technical educational purposes--devoting time and resources to their development and implementation.

This is undesirable for several reasons. First and foremost, it destroys the nationwide uniformity that we have worked so hard to develop in the past 3 years. It diverts resources, both time and money, to education and training rather than to the work mission of REAC. We already spend more per capita than any other unit in APHIS. I cannot justify further expenditure.

Sector meetings were created originally for the purpose of doing Sector business. They can be utilized for such training as defensive driving, CPR, EEO, etc. They should be utilized for ascertaining quality assurance, understanding of policy, identifying needs of the field force, etc.

If there is not a true need for a Sector meeting other than technical education, we should not be using our scarce resources to hold them.

Needs assessments have been conducted of all REAC personnel to identify educational and training needs. We will continue that effort in order to tailor our training resources to meet those identified needs.

Summary

Technical training, resource management, and computer services are provided by headquarters APHIS policy that R&D will provide training and education services for the Agency. REAC Sectors should conduct Sector meetings in accordance with the above.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and
Animal Care





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Subject: Animal Care - Field Supervision

Date: OCT 4 1991

To: REAC Management Team

I have given approval as of today for three Animal Care Sectors to address the problem of field supervision in a manner which best meets the needs of those particular Sectors (see enclosures). As our organization has grown and matured, the differences within Sectors have become more apparent as have their differing needs. Early in our development, it was important that there be uniformity and a great deal of oversight. Now, however, it is time for those who best understand the problems of the Sectors to address these problems. If others contemplate similar changes in the future, please submit them to my office for concurrence.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care

Enclosures





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Western Sector
9580 Micron Avenue, Suite J
Sacramento, CA 95827-2623

Subject: Sector Office Organizational Structure

September 23, 1991

To: Joan M. Arnoldi
Deputy Administrator
USDA, APHIS, REAC
Federal Bldg., Mail Drop Room 558

This memo is in response to our discussions regarding my perception that the professional component of the Animal Care Sector Office organizational structure needs to be revised. I have discussed this problem with the Western Sector Animal Care Specialists and the Assistant Sector Supervisor. We have unanimously agreed on the structure as shown on the attached chart with responsibilities described below.

Animal Care Specialist - Principal Duties

1. **Program oversight and quality control**
Assures uniformity of regulation interpretation and application through in-depth program reviews, review of inspection documents, and personal contacts in office and field.
2. **Overall responsibility for the Horse Protection Act**
3. **Training**
Responsible for providing all Sector and individual level program training, to include orientation and OJT for new employees. Participates in providing national training upon request.
4. **Trouble-shooting**
Functions as the in-house expert that goes on location to problem facilities or high interest incidents/events.
5. **Policy making and regulation interpretation**
With input from the Animal Care Staff as needed, sets and disseminates policy, both sector and national. Acts as the liaison between sector and Staff on policy questions or issues. Serves as the Sector technical expert.



Assistant Sector Supervisor - Principal Duties

1. Supervises Field Employees

Performs all aspects of supervision for all of the field employees (VMO's and ACI's) within an assigned geographical area.

2. Routine Written and Telephonic Communications

Handles all routine written and telephonic communications originating from within assigned geographical area of responsibility. This would include requests for extensions, complaints, regulations clarification, call from field employees, etc. Handles compliance actions up to the point of issuance of a 3-60 or stipulation agreement. Seeks technical guidance from ACS and administrative guidance from SS, as needed.

3. Day-to-day Management of Program Activities Within Area

Functions as the program manager within assigned area. Interacts with the Computer Assistant and Program Records Clerks as needed.

Advantages of this Plan

1. ACS Remains Purely Technical

Current means of ACS providing input on the field employees' performance has, in the eyes of the field, put the ACS in a supervisory role, albeit indirectly. This has created reluctance on their part to ask for ACS involvement in field activities. The proposed system takes the ACS entirely out of the supervisory role. He becomes responsible for the quality control for the overall sector-wide program, not the individual inspector.

2. Reasonable Number of Subordinates

Divides in half the number of employees the Assistant's supervise. (In our case, from 18 to approx. 9 subordinates per Assistant) Management standards suggest no more than 7 subordinates per supervisor.

3. Clarifies Lines of Responsibility

Both office and field have had a difficult time determining who should be responsible for what. This has resulted in redundancy, lack of ownership for some duties, and a substantial amount of confusion, both in the office and field. I am positive the organization described above will remove most, if not all, of this uncertainty. It will result in better utilization of time and travel by eliminating most of the redundant activities currently occurring between the ACS's and Assistant.

Disadvantages of this Plan

1. **Places a Burden on the Assistants**

This burden is presently on the ACS's under the current organization. It will be somewhat lessened by having the sole ACS assume some of the Assistants' burden, such as technical clarification, responsibility for the HPA, training, etc. A more efficient Program Records section with a Computer Assistant will also help alleviate some of the administrative burden.

2. **Changes Job Description for Dr. Koch**

Dr. Koch was hired to be an ACS, not an Assistant. Nevertheless, she is in agreement with this proposed plan, and considers it much more logical and efficient than our current structure. She is willing to make the switch, and I feel will be more properly titled for the activities she is currently performing.

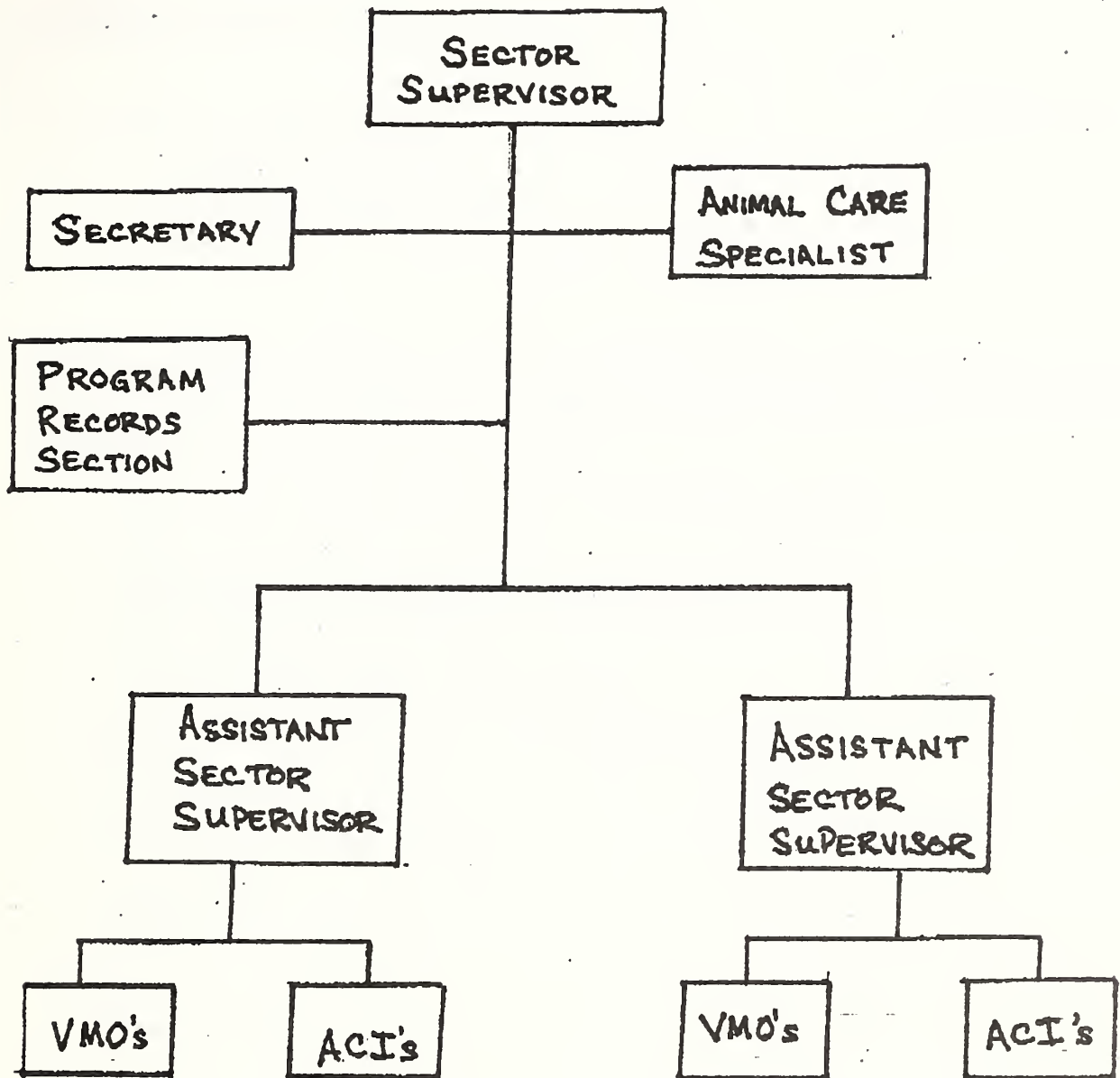
If you have any questions about this proposal, please call me. I would appreciate your consideration of this matter as soon as possible. We like to make this type of transition at the time the new rating period begins. Also, my time to effectuate such a change may diminish for a several months, beginning in the immediate future. Thanks!



Wm. R. DeHaven
Supervisor, Animal Care
Western Sector

PROPOSED SECTOR ORGANIZATION

Western Sector





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South Central Sector
P.O. Box 6258
Ft. Worth, TX 76115-6

Subject: Supervision By Field VMO's

September 23, 1991

To: Dr. Joan Arnoldi
Deputy Administrator
REAC
Hyattsville, MD 20782

As you requested last week, I have enclosed the maps of the NC and SC sectors that would be involved with VMOs supervising ACI. These areas are where the heavy concentration of dog and cat kennels exist. The following are some of the reasons and advantages of this proposal:

- Jerry Diemer and I believe it is best for the program.
- There would be close availability of a VMO to the ACI for support in tough situations, such as difficult reinspections.
- This would also lend another set of eyes which would be very helpful prior to enforcement action (stipulation).
- Moral would be better for both the VMOs and ACIs.
- Jerry would have four of his nine VMOs supervising.
- SC - four of eight VMOs would be supervising.
- I would anticipate some reduction in phone calls to the ACS in the sector office.
- Bruce Mammeli would supervise 8 field VMOs and 2 ACIs, GS-9 Positions, in Texas.
- Very important, is the fact that reinspections and problem facilities should be able to be addressed in a timely and improved manner. This will be an answer to what I anticipate being one of the criticisms in the OIG report.
- The areas of SC involved (KS, MO, OK) includes 2115 - A&B dealers.

Supervision would be as follows:

NC Sector

VMO

ACI - GS-8 Position

Ruth Baker

Don Borchert
Ron Beard



Hovensak	Rhonda Carlson
Orozco	Joe Dillon (Vacancy)
Ken Kirstein	(Vacancy) Ben Herlage GS-9 Position

SC Sector

Ed Slauter	Lyle Hagenbuch Jim Gauthier Phillip Ledbetter (Vacancy)
Jim Mott	Louie Johnson Joe Johnston Bill Sparkman Bob Dunning
Steve Swartz	Bob Bacon Rodney Walker Kendall Lundy Toni Pflughoeft
Nancy Ellifrit	Roy Ramsey Johnny Jennings

Thank you for consideration in this matter. Please call if you have an further questions.

W. A. Christensen

Walter A. Christensen, D.V.M.
Sector Supervisor - Animal Care
South Central Sector

Enclosures

cc: Dr. Morley Cook, Assoc. Deputy Administrator, Hyattsville, MD
Dr. Jerry Diemer, Sector Supervisor, North Central Sector



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Subject: REAC Key Personnel

Date: July 30, 1991

To: James W. Glosser
Administrator

The following are the Key Personnel for Headquarters, Hyattsville, MD:

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and
Animal Care
301 436-8323 (w)
301 577-3630 (h)

Morley H. Cook
Associate Deputy Administrator
Regulatory Enforcement and
Animal Care
301 436-4980 (w)
301 474-6541 (h)

Ron D. Stanley
Assistant Deputy Administrator
Regulatory Enforcement, REAC
301 436-6491 (w)
No Phone Yet

Thomas K. Shehan
Assistant Deputy Administrator
Animal Care, REAC
301 436-4981 (w)
No Phone Yet
301 721-3367



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WASHINGTON

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WASHINGTON



UNITED STATES DEPARTMENT OF AGRICULTURE



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Subject: Hiring Procedures

Date: JUL 3 1991

To: REAC Sector Supervisors

It has become apparent that the established process is not being followed in hiring for field or Sector positions.

When a Sector Supervisor receives a certification list and makes a selection, the Sector is to contact the Resource Management Staff (RMS) at Hyattsville--NOT FSO directly. This has not been done.

FSO will be directed to return to you any certification list or selection which has not been signed by RMS, Hyattsville.

Your cooperation is expected.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and
Animal Care



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Regulatory Enforcement and Animal Care
Room 558, Federal Building
6505 Belcrest Rd., Hyattsville, MD 20782

Subject: VISA Cards & Accounts

Date: MAR 5 1991

To: Sector Supervisors
Regulatory Enforcement and
Animal Care

A decision has been made to issue Animal Care Specialists VISA cards. This will enable them to make small purchases while in official travel status.

Please let Kathryn Carey know by March 11, 1991, those Animal Care Specialists who need to be issued a VISA card.

I am requesting that Sector Supervisors forward a copy of "Statement of Account" for January and February, along with sales receipt copies, of Sector accounts. The Sector Secretaries are the account holders with Sector Supervisors being the approving officials.

Accounts will be reviewed to ensure that proper use and procedures of the GSA Government-wide credit card program are being followed.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement
and Animal Care



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Subject: Critical Performance Element for Equal
Opportunity/Civil Rights

Date: FEB 08 1991

To: APHIS Management Team

The Administrator's January 11, 1991, subject memorandum addressed the establishment of a generic critical performance element and standard for Equal Opportunity/Civil Rights (EO/CR) and advised that this office would provide additional information regarding supplementation and implementation.

As previously advised, all employees will be covered by the following element and standard:

Element: Equal Opportunity and Civil Rights (EO/CR)

Fully Successful Standard: Performs all duties in a manner which consistently demonstrates fairness, cooperation, and respect toward co-workers, office visitors, and all others in the performance of official business. Demonstrates an awareness of EO/CR policies and responsibilities.

Such element and standard will be incorporated verbatim into the performance standards of all non-SES employees, either by incorporating the generic wording into an existing, critical EO/CR standard or by supplementing existing standards with the addition of the above generic element/standard as a separate item.

We have coordinated with the Equal Opportunity and Civil Rights Staff concerning examples of how employees might exceed the above "Fully Successful Standard." Some possibilities for exceeding fully successful include:

1. Develop, implement, or carry out action plans for recruiting, retaining, and managing a diverse staff.
2. Eliminate underrepresentation of minorities and women at all levels.
3. Support EEO initiatives, such as special emphasis programs, by active involvement in planning programs and/or by authorizing employees to do so.
4. The use of creative outreach strategies, including alternative selection methods, to achieve a culturally diverse workforce.
5. Early and equitable resolution of complaints of employment discrimination.
6. Voluntary participation in EO/CR training programs.
7. Meaningful involvement or superior collateral duty performance in recruiting, employee development, and employee recognition initiatives.

8. Demonstrated actions showing that cultural diversity is understood, respected, and valued.

9. Support recruiting, employee utilization, employee development, and recognition programs by active involvement in planning and implementing programs and/or by authorizing employee involvement.

10. Evidence that employees are empowered and that all human resources are being fully utilized.

11. Taking positive steps to overcome numerical imbalances.

12. Create an environment where no employee is advantaged or disadvantaged because of race, color, national origin, religion, sex, age, or handicapping condition.

13. The use of creative, comprehensive, and productive approaches to upward mobility.

14. Performs EO/CR collateral duties in a superior manner.

15. Participation on EO/CR committees and human resource task groups that result in significant contributions.

16. Makes necessary changes in the work environment to accommodate employees with disabilities.

The above listing is not, of course, prescriptive or all-inclusive but is offered as suggested possibilities for better assessing EO/CR performance.

Since the subject element/standard is applicable to all employees (including bargaining unit employees), unions must be allowed the opportunity to have input (suggestions, recommendations) into the element/standard and its application before it is actually implemented for bargaining unit employees. Consequently, we are advising all unions within APHIS of the above information and providing them the opportunity to submit input directly to the organizational management level at which their exclusive recognition exists. We are also advising the unions that any input they may wish to make should be submitted no later than March 1, 1991.

It is recommended that the EO/CR critical element and standard be implemented for all employees on or about April 1, 1991, at the time of the Mid-Year Progress Review. Such implementation date would allow the receipt and consideration of any union input, any discussion with individual employees, and a final determination by supervisors/managers as to any supplementation of the generic element and fully successful standard while providing a full 6 months' evaluation regarding the element prior to performance evaluations in October 1991.

Should you have any questions or concerns regarding the above, please contact Performance, Conduct, and Labor Relations, Human Resources Division, on FTS 436-6486 or Area Code (301) 436-6486.

A handwritten signature in cursive script that reads "George S. Robertson". The signature is written in dark ink and is positioned above the printed name and title.

George S. Robertson

Director

Human Resources Division



United States
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Agriculture

Animal and
Plant Health
Inspection Service

Field
Servicing
Office

Butler Square, Fifth Floor
100 North Sixth Street
Minneapolis, MN 55403

Subject: Government Owned Vehicles

To: Joan M. Arnoldi, Deputy Administrator
USDA, APHIS, REAC
Federal Building, Room 208
Hyattsville, MD

Date: January 10, 1991

Your request for unmarked Government-Owned Vehicles (GOV's), has been approved. You are authorized to retain the government license plates as requested per Michelle Fernandez's conversation with Katherine Carey.

In order to properly maintain our Equipment Management Information System the sector supervisors are required to inform drivers of GOV's to list the federal license plate number on all quarterly vehicle reports. Also required is a list of vehicles referencing new state license plates.

If you have any questions, please contact Michelle Fernandez at FTS 777-2148 or Area Code (612) 370-2148.

Herbert G. Balk, Jr.
Chief, Accounting and Property Services



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Subject: REAC EEO Commitment

Date: OCT 16 1990

To: REAC Management Team

As we look to the future and the implications for all of us as stated in "Work Force 2000," REAC needs to develop a stronger commitment to the principals of EEO and affirmative action. Additional accomplishments are not easy when hiring is at a minimum. We can, however, work at all times to adjust our attitudes so that REAC becomes an attractive organization for women and minorities.

Our EEO commitment must extend beyond the hiring process--we must be serious about retention and advancement to the most senior levels.

In FY 1990, I began to ask for a justification from supervisors and managers when a minority was passed over in the hiring process for certain positions.

In FY 1991, this effort will extend to any and all hires or advances in REAC. If a minority or women was a possible candidate for a hire or advancement and was not selected, please provide me with a justification for your selection prior to making an offer. I will either accept the justification and initial it or speak to you directly for further clarification.

Let's all make a commitment to have REAC become an APHIS leader in making minorities a meaningful part of our organization.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and
Animal Care



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JAN 23 1990

REGULATORY ENFORCEMENT AND ANIMAL CARE MEMORANDUM NO. 100

Subject: Headquarters Security Plan

January 17, 1990

To: REAC Headquarters Personnel

I. PURPOSE

To help prevent access to files and to prevent theft of Government and personal items, all Headquarters personnel will adhere to these Security Plan Guidelines.

II. GUIDELINES

A. Bar and/or lock each evening all REAC files that have a locking device. Supervisors should make this an assigned duty.

B. REAC personnel will be aware of all strangers in the office area. Strangers will be questioned and escorted to the person they wish to visit.

C. A listing for REAC is posted in the directory in the hall by the elevators to indicate location of REAC Headquarters Offices.

D. A REAC person will be present on duty in all REAC office areas (especially outer offices) during all work hours. For emergency, the person on duty must know the location of the following phone numbers:

1. Federal Protective Service - 472-1111
2. Hyattsville Police Department - 972-0034
3. Elbert Jones - APHIS Security
Officer for Federal Bldg. - 436-7816
4. Office of Inspector General
Investigations - 436-8850

Note: If an emergency occurs, phone 1 & 2 above to report the incident and request the assigned case numbers. Then call and inform 3 above, who will request the case numbers. Also call 4 above to report the incident.

Joan M. Arnoldi
Deputy Administrator
Regulatory Enforcement and
Animal Care



REAC MEMO

To: REAC Supervisors and Managers

From: Joan M. Arnold *JMA*

Date: September 14, 1989

Subject: REAC Personnel Actions

=====

Effective September 15, 1989, all personnel actions dealing with promotion, selection or change of station must be approved by this office prior to notification of the employee or selectee. Supervisors may review the roster, interview and make recommendations. Resource management staff will not send out notification letters until approval has been granted.

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